United States Circuit Court of A

FOR THE SECOND CIRCUIT.

163 - 692.

WILLIAM LAW et al.,
Libellants and App

vs.

The Steamship "TRAVE," her engines, etc., THE NO
GERMAN LLOYD,
Claimant and Ap

TRANSCRIPT OF RECO

Appeal from the District Court of the United
for the Southern District of New York.

INDEX.

	PAGE.
Statement	1
Libel	2
Answer	5

TESTIMONY.

Testimony for Libellants:

Charles Jaeger,	
Direct	11
Cross	21
Re-direct	21
Ragner Hyacinthe,	
Direct	22
Cross	25
Re-direct	26
Julius W. Olsen,	
Direct	27
Cross	30
Re-direct	31
Edward Walton,	
Direct	31
Cross	33
Re-direct	34
Edwin F. Hurlburt,	
Direct	35
Cross	46
Re-direct	55
Re-cross	57
Geo. L. Prentice,	
Direct	105

Testimony for Claimants:

Henry Walker,
Direct 59
John W. Shackford,
Direct..... 61
Albert Potjer,
Direct..... 63
Wm. Reimkasten,
Direct..... 66
Cross..... 67
Wm. C. D. Meissel,
Direct..... 71
Cross..... 75
Re-direct..... 85
Heinrich Kenter,
Direct..... 86
Cross..... 89
Re-direct..... 90
August Berckelmann,
Direct..... 91
Cross 93
Johannes Von Reigen,
Direct..... 93
Cross..... 94
Re-direct..... 95
Re-cross..... 95
Albert Ruhlow,
Direct..... 95
Cross 97
August C. F. Treptow,
Direct 98
Cross..... 99
Re-direct..... 100
Re-cross..... 100
Heinrich Pohl,
Direct..... 101
Cross..... 102
Gottlieb Buhtz,
Direct..... 103
Cross..... 103

Johann Wiese,
Direct..... 104
Cross..... 105

Claimants' Exhibit A..... 110
Opinion, Brown, J..... 111
Final Decree..... 115
Notice of Appeal..... 118
Assignment of Errors..... 119
Certificate of Clerk U. S. District Court..... 121

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK.

WILLIAM LAW *et al.*,
Libellants and Appellants,

vs.

The Steamship "TRAVE," her Engines, &c.,
THE NORTH GERMAN LLOYD,
Claimant and Appellee.

STATEMENT.

1892.
July 28. Libel filed.
Sept. 16. Answer filed.
1893.
Feb. 2. Cause tried before Hon. Addison Brown, U. S. District Judge.
April 7. Opinion rendered directing decree for libellants for one-half damages and costs.
1894.
July 27. Final decree entered.
July 27. Order entered on consent striking out name of Edwin F. Hurlbert as libellant.
Aug. 2. Notice of appeal filed.
Aug. 7. Assignment of errors filed.

5

DISTRICT COURT OF THE UNITED STATES, Southern District of New York. } In Admiralty.

To the Honorable ADDISON BROWN, Judge of the United States District Court for the Southern District of New York:

William Law, Bowman Law, John Hibbert, Thomas Perry, Alby Ryerson, Josiah Crosby, Herbert H. Brown, James F. Scott, N. B. Hatfield, William Currier, Lyman E. Cann, all of Yarmouth, Province of
6 Nova Scotia, Dominion of Canada; Herbert C. Hall and George H. Perry of Boston, District of Massachusetts; W. F. Hagar of Philadelphia, East District of Pennsylvania, sole owners of the late ship *Fred B. Taylor* of Yarmouth, Nova Scotia, and Edwin F. Hurlbert, late master of said ship, exhibit this, their libel, against the German steamship *Trave*, her boats, engines, tackle, apparel and furniture, and against all persons intervening therein in a cause of tort for col-
7 lision, civil and maritime; and thereupon the said libelants allege and articulately propound as follows:

FIRST.—That on or about the twelfth day of May last past the said ship *Fred B. Taylor*, of eighteen hundred tons measurement, or thereabouts, owned as aforesaid, sailed from the port of Havre, France, bound for New York; that the said ship was then tight, staunch and seaworthy, manned with a good and sufficient crew of men commanded by Edwin F. Hurlbert, a competent and experienced master, and so
8 continued until after the collision hereinafter set out.

SECOND.—That at six A. M., June 22d last past, the said ship *Fred B. Taylor* was sailing under easy sail on the port tack, close hauled, going at a moderate rate of speed. That the said ship was about two hundred and seventy-five (275) miles from Sandy Hook. The wind was about west south west blowing a moderate breeze. The weather was foggy and the said ship was blowing her fog signal as required by law. A competent man was on the lookout and a proper man

stationed at the wheel, the master being on deck and in charge of the vessel.

THIRD.—That soon thereafter the sound of a steamship was heard rushing through the water and in a little while the hull of a steamship which afterwards proved to be the German steamship *Trave*, was seen through the fog going at what appeared to be full speed. That before those on board of the said ship *Fred B. Taylor* had time to execute any order the said steamship *Trave* struck the said ship between the main and mizzen rigging on the port side, cutting her completely in two and making her at once a total loss.

FOURTH.—That the said collision and the damage resulting therefrom were caused wholly by the fault of the said steamship *Trave* and those in charge of her, among other things: First, in not having a competent lookout; second, in going at an improper rate of speed in a fog; third, in not sounding a proper fog signal as required by law; fourth, in not changing her course so as to avoid a collision; fifth, in not keeping clear of a ship under sail as required by law.

FIFTH.—That the said ship *Fred B. Taylor* and those on board of her were wholly without fault, and all was done that could have been done in order to avoid a collision.

SIXTH.—That by reason of said collision the said ship *Fred B. Taylor* of the estimated value of eighty-five thousand dollars ($85,000) was totally lost and the master and crew lost all of their personal effects of the value of about three thousand dollars ($3,000).

SEVENTH.—That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court; and said steamship *Trave* is now lying within the jurisdiction of this Honorable Court.

EIGHTH.—Wherefore, your libellants pray that pro-

cess in due form of law may issue against the said steamship *Trave*, her tackle, apparel, boats, engines and furniture, and that all persons interested therein may be cited to appear and answer under oath, and that this Honorable Court may be pleased to pronounce for the aforesaid damages and costs, and for such other and further relief as to justice may appertain, and as this Court is competent to give in the premises.

E. F. HURLBERT.

EUGENE P. CARVER and EDWARD E. BLODGETT,
Proctors.

STATE OF NEW YORK,
City and County of New York. }

NEW YORK, July 28th, 1892.

Personally appeared before me Edwin F. Hurlbert and subscribed to the foregoing libel, and made oath that the same was true to the best of his knowledge and belief.

In witness whereof, I hereunto set my hand and notarial seal the day and year first above written.

JAS. J. MANUAL,
Notary Public,
Kings County.

Cert. filed in N. Y. Co.

[Endorsed:]—Libel.—Filed July 28, 1892.

17

DISTRICT COURT OF THE UNITED STATES
For the Southern District of New York. } In Admiralty

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York:

The answer of the "North German Lloyd," a steamship company incorporated under the laws of Germany, owner and claimant of the steamship *Trave*, her engines, tackle, &c., to the libel and complaint 18
of William Law, Bowman Law, Thomas Perry, Alby Ryerson, Josiah Crosby, Herbert H. Brown, James F. Scott, N. B. Halfield, William Currier and Lyman E. Cann, all of Yarmouth Province of Nova Scotia, Dominion of Canada; Herbert C. Hall and George H. Perry of Boston, in the State and District of Massachusetts, and W. F. Hagar of Philadelphia in the State and Eastern District of Pennsylvania, alleged in the libel to be the sole owners of the ship *Fred B. Taylor* of Yarmouth, Nova Scotia; and Edwin F. 19
Hurlbert, last master of said last named ship, in a cause of collision civil and maritime, alleges as follows:

FIRST.—As to the facts alleged in the first article of said libel, this respondent has no knowledge, and therefore leaves the libellants to prove the same as they may be able and advised.

SECOND:—This respondent has no knowledge derived from actual observation of the facts alleged in the 20
second article of the said libel as to the place on the sea at which the said ship *Fred B. Taylor* was at 6 o'clock on the morning of the 22d June last, or as to her then rate of speed, or whether she was then surrounded by a fog, or whether she was then blowing fog signals, or then had a competent lookout on duty, or whether her master was then on deck in charge of his ship. This respondent therefore denies each and every of said allegations except such as are hereinafter expressly admitted.

21 THIRD :—This respondent admits that on the morning of the 22d day of June last, between 6 and 7 o'clock, a collision took place between said ship *Fred B. Taylor* and the steamship *Trave* whereby the said *Fred B. Taylor* was sunk and became a total loss, but this respondent alleges that the circumstances of said collision are imperfectly stated and set forth in the third article of said libel and that said collision and all the facts relating thereto are and were as stated in the next article of this answer and not
22 otherwise.

FOURTH :—This respondent alleges that said steamship *Trave* is a large steamer of more than 438 English feet in length, more than 48 feet breadth of beam, and more than 34 feet depth of hold, and that her gross tonnage is nearly 5,000 tons.

And this respondent alleges that said steamship sailed from New York on the 21st of June, about 1 o'clock P. M. with a large and valuable cargo of 733
23 tons measurement, 247 cabin passengers and 209 steerage passengers and 202 persons, embracing her officers and crew, making 658 persons in all. She passed Sandy Hook about 3 o'clock on that afternoon and was put on course east half south, true course, bound for her home port Bremerhaven, via Southampton. She was thoroughly manned and fitted in all respects with a full complement of thoroughly experienced officers and crew. She continued on this course down to near the time when the collision hereinafter set
24 forth occurred, and from the time she left Sandy Hook uutil 10 minutes past 6 o'clock on the morning of the 22d, the weather had been clear and the atmosphere free from fog. The wind was blowing a moderate breeze from about southwest. From 4 o'clock till the time of the collision the first and second officers were on the bridge, two competent seamen stationed in their proper places were on the lookout and a competent quartermaster at the wheel.

At 10 minutes past 6 o'clock on the morning of the 22d, it became for the first time slightly overcast and

hazy but not foggy. At that moment the engine was 25
by telegraph set on "Attention," the effect of which was to reduce the speed of the steamer to about 15 miles an hour. Between 10 minutes past 6 and 20 minutes past 6, the haze lightened so that at about 20 minutes past 6 a steamer passed the *Trave* on the port side about two miles distant bound westward and was plainly visible from the *Trave* with the naked eye. In four or five minutes thereafter it became hazy again, when the two men on the lookout were ordered and did go from the crow's nest to the bow of 26
the ship to look out from the latter point. The sun was then shining. The first and third officers were on the bridge constantly and diligently on the lookout for approaching vessels. None were in sight, nor was there any fog surrounding the *Trave* or in sight from her decks or bridge down to within two minutes before the collision when the *Trave* suddenly entered a fog bank. At the same instant the first officer on the bridge discovered the foresails of a ship looming above the fog one point on the *Trave's* starboard bow, and 27
instantly thereafter the men on the lookout discovered the ship and reported her to the bridge. Immediately after her hull came in sight and she proved to be the *Fred B. Taylor*. Instantly, on discovering her sails rising above the fog the first officer ordered the wheel of the *Trave* to hard-aport and her engine reversed full speed astern. These orders were promptly executed and obeyed by the steamship. The *Travers* bow fell off to starboard about a point and a half and her engines going back full speed had reduced her way 28
through the water to eight or nine miles an hour, when she struck the *Taylor* about 10 feet forward of her mizzen mast, going through and sinking her at a little after 6 o'clock and not exceeding two minutes after the *Taylor* was discovered.

This respondent further alleges that no one on board of the *Trave* did discover or could have discovered the *Fred B. Taylor* sooner than the first officer did in fact sight her one and a half or two minutes before the collision. No fog

29 signals were heard on the *Trave* from the *Fred B. Taylor* till the moment the first officer sighted her sails and then only one and that by the lookout at the bow of the *Trave*. It was then impossible for the *Trave* to clear her, though every effort was made to do so and to that end the *Trave's* course was changed and her engine reversed as hereinbefore stated, in order if possible to clear her stern or, if not, to strike her a glancing blow. At that moment, the *Fred B. Taylor*, instead of holding her course, as it was her
30 duty to do, ported her wheel, and thus her broadside was presented to the *Trave*, so that the latter struck her at nearly a right angle. As the vessels were approaching each other when they were first discovered had they both held their courses a collision would have been inevitable and the *Taylor* would have struck the *Trave* at such an angle and with such speed that it would in all probability have resulted in the destruction of both vessels.

31 FIFTH.—This respondent denies all the allegations of the fourth article of the libel.

SIXTH.—This respondent denies all the allegations of the fifth article of the libel, and on the contrary alleges that said collision was caused solely by the fault of those in charge of the said *Fred B. Taylor*, among other things as follows:

1. In not having a competent lookout at his post of duty.

32 2. In not having a foghorn or signal of sufficient power for the sound thereof to reach the *Trave* long before either of the vessels was discovered by those in charge of the other.

3. In not blowing the foghorn they did have till the two ships were so near each other that it was impossible to avoid a collision.

4. In not having a competent officer on deck in charge of the watch at the time and for at least half an hour before the collision.

5. In changing the course of the *Fred B. Taylor*

after those in charge of the latter had discovered the 33
Trave, by porting her wheel or letting it go whereby she fell off to starboard, slackened her speed and presented her broadside to the steamship.

SEVENTH.—This respondent has no knowledge as to the amount of damages sustained by the owners of the said *Fred B. Taylor*, or by her master or crew, in consequence of her loss, and therefore denies the allegations contained in the sixth article of the libel.

Wherefore, this respondent prays that this libel may 34
be dismissed, with costs to it.

NORTH GERMAN LLOYD, by GUSTAV H. SCHWAB,
Agent.

SHIPMAN, LAROCQUE & CHOATE,
Proctors for the Claimant.
WM. D. SHIPMAN,
Advocate.

SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } ss.: 35

GUSTAV H. SCHWAB, being duly sworn, says that he is a member of the firm of Oelrichs & Co., who are the agents in fact in this city and in this Southern District of New York of the North German Lloyd, the claimant named in the foregoing answer, and that the same is true to his best knowledge and belief.

GUSTAV H. SCHWAB.

Sworn before me this 16th }
day of September, 1892. }

FRANCIS E. PARKER, 36
[SEAL.] Notary Public,
N. Y. City and County.

[Endorsed:]—Answer of North German Lloyd, Claimant.—Filed Sept. 16, 1892.

37 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

WILLIAM LAW and others AGAINST The Steamship "TRAVE."	Before Hon. Addison Brown, J.

38

NEW YORK, February 2, 1893.

APPEARANCES:

Messrs. CARVER & BLODGETT (Harrington Putnam, Esq., of counsel) for the libellants.

Messrs. SHIPMAN, LAROCQUE & CHOATE (Hon. William Shipman and Hon. William G. Choate of counsel) for the claimants.

39 Mr. Putnam states the allegations of the libel.

Mr. Choate those of the answer.

Mr. Carver offers in evidence the following depositions taken on behalf of the libellants:

James Jaeger, second officer.

Ragner Hyacinthe, the man at the wheel.

Julius W. Olsen, who was on deck on the forecastle head.

Edward Walton, boatswain.

The first mate was in his room at the time of the collision and was killed; the sailmaker was also killed
40 by the collision. The lookout was taken by the *Trave* from Southampton and we have not been able to find him since.

U. S. DISTRICT COURT, 41

SOUTHERN DISTRICT OF NEW YORK.

WILLIAM LAW and others, owners of ship "FRED B. TAYLOR," etc.,
Libelants,

AGAINST

The Steamship "TRAVE," her engines, etc., 42
Claimant.

Depositions of libellants' witnesses taken before Francis E. Parker, Notary Public, July 29, 1892.

APPEARANCES:

EUGENE P. CARVER, Esq., for libelants.
Messrs. SHIPMAN, LAROCQUE & CHOATE, for claimant. 43

CHARLES JAEGER, a witness on behalf of the libellants, being duly sworn:

EXAMINED by Mr. Carver:

Q. You are a native of Germany? A. Yes, sir.

Q. Where do you now live? A. Well, I have been in New York, sir, for the last twenty years. I was born in Germany, but am living in New York.

Q. How old are you? A. Thirty-four, in September. 44

Q. How long have you been to sea? A. Twenty-one years and some months.

Q. How long have you served in American and British vessels? A. As long as I ever went to sea. I have not been on any other ships.

Q. You were the second mate of the *Fred B. Taylor* at the time of the collision with the steamship *Trave*? A. Yes.

Q. Where did you ship on board the *Fred B. Tay-*

45 *lor* and in what capacity? A. In Havre as second mate.

Q. On what date? A. I think it was the 9th of June.

Q. On what day did you leave Havre? A. I think it was the 12th, if I am not mistaken.

Q. Was it on the 12th of the same month that the collision took place, or the preceding month? A. No, the same month—no, it was the next month. It was the 22d of June.

46 Q. When did you ship, I asked? A. On the 9th.

Q. On the 9th of what month? A. 9th of May.

Q. And your vessel left the port of Havre on what date? A. On the 12th.

Q. Bound where? A. For Sandy Hook, for orders.

Q. What, if any, cargo did she have on board? A. Ballast.

Q. Do you know about how much ballast she had on board? A. Yes, between five and six hundred tons.

47 Q. How large a ship was the *Fred B. Taylor?* A. Pretty nearly eighteen hundred tons—not quite eighteen hundred tons.

Q. About how long was she? A. About two hundred and fifty feet.

Q. About how wide? A. I think about 45 feet beam; something like that.

Q. And she was a wooden ship? A. Yes.

Q. As to whether or not she had houses on deck? A. She had forward houses and afthouse.

48 Q. How far did the poop deck extend on the vessel forward? A. To the forepart of the afthouse.

Q. And did you step at once from the forward part of the afthouse on to the main deck? A. Yes.

Q. How many men had you on board the *Fred B. Taylor* when you left Havre? A. Twenty-two all told.

Q. How many men were there in your watch beside yourself? A. Seven in fine weather. The boatswain and a sailmaker were on deck all day.

Q. How was the weather after you first left Havre?

A. The day we left Havre, sir, it was pretty good 49
weather—clear.

Q. Did you experience any foggy weather soon after you left the port? A. Yes; two days after we had foggy weather most all of the time, except two or three clear days; that is all.

Q. What was the date that the collision took place between the *Taylor* and *Trave?* A. On the 22d of June, sir.

Q. And what was the last day prior to that time when an observation of the sun was taken on board of 50
your vessel? A. think it was on the 18th or 17th, sir; I think it was on the 18th.

Q. At what time did you come on deck on the morning of the 22d? A. I came on deck at four o'clock.

Q. Did your watch relieve the mate's watch? A. No, sir; we wore ship at that time, and after the decks were cleared up we relieved the watch.

Q. Who was in charge of the deck after the mate's watch went below? A. The captain, sir. 51

Q. And on what tack was your vessel then? A. On the port tack, sir.

Q. How was the wind at that time? A. By the compass it was southwest.

Q. How was the wind I say? A. The wind was west, southwest, by the compass.

Q. And how was the vessel heading? A. Northwest.

Q. And how was she heading with reference to the wind? A. Steering close-hauled by the wind. 52

Q. On which tack? A. On the port tack, sir.

Q. Did you see that the lookout and the man at the wheel were relieved at four o'clock? A. Not exactly at four o'clock, but as soon as my watch relieved the mate's watch.

Q. And when were they next relieved? A. Two or three minutes after six; five minutes, maybe.

Q. Who was then put at the wheel? A. A Frenchman by the name of Raguer.

Q. Who was on the lookout? A. Ernest Moil.

53 Q. What nationality was he? A. A German, sir.

Q. How was the weather at that time, six o'clock, or when these men were relieved? A. Thick, very thick.

Q. How was the weather? A. It was pretty good weather, but a dense fog.

Q. How was the wind at that time? A. West, southwest.

Q. And on what tack was she then? A. On the port tack.

54 Q. And how was she sailing then with reference to the wind? A. Pretty close to the wind.

Q. As to whether or not at that time any fog signals were sounded on board your vessel? A. They were sounded every minute, as far as I know.

Q. And how long had they been sounded at six o'clock? A. Right straight along.

Q. For how long from four o'clock? A. All night, sir, and before that all day.

Q. What were those signals? A. Two blasts.

55

(By Judge Shipman:

Q. Two blasts on what? A. On the foghorn every minute; about every minute.)

Q. Did you hear these blasts after the lookout was relieved at six o'clock? A. Yes.

Q. Who sounded the foghorn? A. Ernest Moil.

Q. The man on the lookout? A. The man on the lookout, sir.

Q. What sail did your vessel have on her at the
56 time of the collision? A. The three royals, the cross-jack and spanker were furled.

Q. What sort of a breeze was blowing at that time? A. A very light breeze, sir.

Q. How fast, in your opinion, was your vessel sailing through the water at that time? A. I reckon about 4½ miles. I may be one-quarter of a mile out, one way or the other.

Q. Where were the other men in your watch besides the man on the lookout and the man at the wheel? A.

One man was on the forecastle head splicing the jib sheet. 57

Q. And where were you from six o'clock to the time of the collision? A. On the main deck, along with the rest of the men.

Q. Where was the captain? A. Aft, at the poop.

Q. On what side? A. On the port side aft.

Q. Was he aft of the after house? A. No, on the poop deck, aft.

A. But was he aft of the after part of the house? A. Yes. 58

Q. What sort of a foghorn were you sounding? A. It was a French horn bought in Havre.

Q. As to whether this horn was the kind of horn? A. Yes, that is the kind of horn.

Q. It was a horn like that (producing horn)? A. Exactly like that.

(By Judge Shipman:

Q. The same size? A. Same size, sir.)

The said horn marked Exhibit 1, July 29th, 1892. 59

Q. What kind of horn did your vessel have besides that when she left Havre? A. A mechanical horn, one of those with a slide which you pull up and down.

Q. As to whether or not that horn had been used after she left Havre? A. We used it about 18 or twenty days, as near as I can tell, after we left Havre.

Q. And why was it not used longer? A. It didn't sound as well as it used to do when we left Havre. 60

Q. Why was it it didn't sound as well? A. The patent or valve inside got out of order.

Q. As to whether or not the horn that you sounded at the time of the collision, gave in your opinion, as loud a noise as the mechanical horn, that you had previously used, before the mechanical horn got of order? A. It sounded to me better, sir, than the mechanical horn that we had on board the ship.

Q. How does this horn that we have here compare

61 with the ordinary foghorn? A. It sounds better, sir. We can hear it further.

Q. How far do you think this horn or a horn like the one you sounded at the time of the collision could be heard? A. A mile and a half or a mile.

Q. As to whether or not, after six o'clock, you heard the fog signal of any vessel up to the time of the collision? A. No, sir.

Q. What was done on board of your vessel besides what you have related, from the time that the lookout
62 and man at the wheel were relieved until the time of the collision? A. The men were getting ready to wash the decks down, sir.

Q. At about what time did the collision take place? A. Between ten and fifteen minutes past six in the morning.

Q. Was any report made by the man on the lookout before the collision took place, if so, what was that report? A, Yes; I heard the man yell out something, but I could not tell what it was he was saying.

63 Q. Were any orders given on board of your vessel after the report was made, if so, what were those orders and by whom were they given? A. I heard the captain singing out something, but I couldn't understand what it was—it was too far away from me.

Q. What was the first that you yourself saw or heard of the steamer? A. I run over from the starboard side to the port side and I saw a big steamer coming about half a point before the beam, heading about east or east by south.

64 Q. What else did you see before the collision? A. Nothing else, sir; for in a few minutes she was through us.

Q. And how long do you think it was from the time you heard the lookout make the report until the steamer struck your vessel? A. A few seconds, sir.

Q. What did you do during that time? A. I didn't do anything, sir; I ran from over the starboard side to the port side when I heard the man call out.

Q. What was the result of the steamer strking

your vessel—what happened? A. The vessel broke 65
in two.

Q. And what became of the steamer? A. She went right through us and went out of sight. I didn't see anything of her.

Q. What occurred to you? A. As soon as the steamer struck us I found myself on the starboard side in the water.

Q. What did you do then? A. I swam to some pieces of rigging floating about, and stopped there about twenty minutes or so. 66

Q. Were you taken on board of a boat then? A. No, sir.

Q. What did you do? A. I swam to another piece. I saw that this piece would not float me very well, and I went to another piece.

Q. What did you do next? A. I saw the stern part of the ship then, our ship, and I saw the patent log that hands at the stern.

Q. Well, what did you do? A. I swam to the stern of our ship. 67

Q. Was the stern separate from the bow? A. Yes, sir; it cut the stern off.

Q. Were you taken from the stern by the boats of the steamer? A. No, sir.

Q. Please state to us in your own language how you were saved from the wreck? A. I left the stern of the ship again. When I got on board the stern I saw a life buoy floating by with the name of *Trave*, of Bremen, on it. I thought the stern of the ship was going to break in pieces, and looked for another piece 68
that would be safer than the stern. I did not know but the stern was going to be broken in pieces. I then took the life buoy and then swam to another piece of vessel. This was a square piece; it must have boen a piece of between decks, and I took the life buoy on top of this piece of between decks, and I took the life buoy on top of this piece in case I should need it again. And I was there about three-quarters or half an hour, as near as I can tell, when I saw a

69 boat belonging to the *Trave*, with Captain Hurlbert and the man at the wheel of our ship in it.

Q. Then were you taken on board of the boat? A. I was taken on board.

Q. And were you taken from the boat on board the *Trave?* A. Not right away, sir. They went to other parts of the ship to see if they could find any others.

Q. And eventually you and the other men were saved—taken on board the *Trave?* A. Yes.

70 Q. How was the weather at the time you were taken on board the *Trave?* A. Very light breeze, sir, and heavy fog.

Q. Did you hear any steam whistle or fog signal at all before the collision that day? A. No, sir.

Q. How long were you on board the *Trave?* A. From the 22d of June to the 30th of June.

Q. And where were you landed? A. At Southampton, sir.

Q. And from thence you went to London and then
71 came to New York? A. I stopped two days in Southampton.

Q. But then you went to London and came to New York? A. Yes.

Q. And arrived in New York on the 27th of the present month? A. Yes.

Q. On what vessel? A. The *Persain Monarch*, steamship.

Q. How was the weather the day after you were taken on board the *Trave?* A. Sometimes it was
72 thick, sir, and then it would clear up again; the day after it was a moderate breeze, very light breeze, but it was thick now and again.

Q. What, in your opinion, was the rate of speed that the *Trave* was going from the time you first saw her until the collision took place?

Objected to.

A. I should say fifteen or seventeen miles an hour—fifteen or sixteen.

Q. Where did this collision take place? A. Two 73
hundred and fifty miles off New York.

By Judge Shipman:

Q. What direction from Sandy Hook? A. Well, I don't remember now, sir.

Q. You say that it was more or less foggy the twenty-four hours after you came on board the *Trave*, do you? A. It was not so much so the next day as the day I came on board.

Q. What time was it that you came on board of the 74
Trave, or about what time? A. I think it was between 9 and 10 o'clock, sir.

Q. And how was the weather with reference to fog from that time until night? A. It was thick.

Q. How fast, in your opinion, did the *Trave* go through the water per hour from the time you came on board until six o'clock that night?

Objected to as immaterial, and also on the ground that the witness is not shown to be an expert and was not competent to give an opinion. 75

A. I should say between 15 and 16 miles—15 miles all the time.

Q. Have you ever been on board steamers? A. Yes, in China.

Q. How long were you on board steamers? A. I was in China between two and three months.

Q. What position did you hold on board a steamer? A. Second mate.

Q. How long have you been second mate? A. 76
Pretty near ten years.

Q. Whether or not from the time you came on board the *Trave* until six o'clock that night, you were on deck of the *Trave*? A. Not all the time, sir.

Q. Did you, at any time during that time, look over the side of the *Trave* and watch, with regard to her speed while the fog was thick.

Objected to.

A. Yes.

77 Q. How was the weather the twenty-four hours preceding the collision with reference to fog? A. Very light breeze.

Q. No fog? A. Oh, the fog, just as thick as ever after the collision.

Q. How was the fog for the twenty-four hours before the collision? A. Thick weather.

Q. How long had it been thick weather? A. Three or four days, sir.

Q. As to whether or not, during that three or four
78 days, you had heard any other fog signals than those on board of your own vessel? A. Yes sir.

Q. As to whether or not, during that time, you had heard the fog signal of any steamer? A. Yes, sir.

Q. Do you know what steamer that was? A. Yes.

Q. What was her name? A. I think it was the *Aller*, I made her name to be the *Aller*.

Q. What day was that? A. It was Sunday I think, the 19th of June. It was on a Sunday.

Q. How was the weather then as compared with the
79 weather at the time of the collision? A. Thick too, sir, about the same.

Q. On which tack was your vessel? A. On port tack.

Q. And about how was she heading? A. Northwest, sir, northwest by north, I think.

Q. How long did you hear those signals of the *Aller*? A. Between fifteen and twenty minutes, fifteen minutes I should say.

Q. And how near did the *Aller* pass to you? A.
80 About two ship's length, I should say, or a ship's length.

Q. As to whether or not the *Aller* in any way, changed her course after you first sighted her? A. Yes.

Q. If she changed her course, in what direction did she change it?

Objected to as immaterial.

A. Changed her course to the southward.

Q. Which way was the *Aller* bound? A. She was 81
bound east.

Q. What fog signal was your vessel sounding at that time? A. The same foghorn that we were using at the time of the collision.

Q. How close does your vessel sail to the wind? A. About six points.

Cross-Examination by Judge Shipman:

Q. How long from the time you discovered the *Trave* was it, that she struck the *Taylor*? A. A few 82
seconds, sir.

Q. What time do you say it was that you changed the watch that morning? A. The watch got relieved you mean, sir?

Q. Yes. A. About twenty minutes past four.

Q. And the collision happened about ten minutes after six? A. Between ten and fifteen minutes after six.

Q. What time of day was it when the *Aller* passed you in the way you described? A. About a quarter 83
past eight in the morning, sir.

Re-direct Examination.

Q. As to whether or not you lost some of your personal effects? A. I lost everything, sir.

Q. And have you made out a list of what you lost? A. Yes, I have made out a list.

Q. Have you made out a list of what you lost attaching to that list what is a fair value of what you lost? A. I don't remember everything I lost, but I 84
made out, as near as I can recollect, a list.

Q. Have you that list with you? A. Yes.

Q. Will you produce it? A. Yes.

Witness produces list which is marked Exhibit 2, this date.

Q. Do you expect to go to sea soon? A. I cannot go the way I am now, sir.

Q. I mean you intend to go away before fall? A.

85 I don't know what I am going to do, sir. If I can get anything on shore, I shall do so; I am getting tired of going to sea now.

(Signed,) C. JAEGER.

RAGUER HYACINTHE, a witness on behalf of the libellants, being duly sworn:

86 EXAMINED BY MR. CARVER:

Q. What is your name? A. Hyacinthe Raguer.

Q. And you are a native of? A. Guirnae, Brittany, France.

Q. How old are you? A. Thirty.

Q. How long have you been to sea? A. Fifteen years.

Q. How long have you been to sea in British and American vessels? A. Only six months in an English vessel—six months and forty days.

87 Q. Have you ever been a seaman on board of American vessels? A. No, sir; never.

Q. Where did you ship on board the *Fred B. Taylor?* A. In Havre.

Q. Is this your first voyage on the ship *Fred B. Taylor?* A. Yes, sir, and the last one.

Q. In what capacity were you serving? A. Able seaman.

P. Whose watch were you in? A. Starboard watch—second mate's watch.

88 Q. What sort of weather did the *Fred B. Taylor* have after she left Havre? A. Oh, well, we had some bad weather, head wind—fog most of the time.

Q. At what time in the morning did you come on deck on the day of the collision? A. Four o'clock.

Q. And what did you do when you first came on deck? A. Set staysail, flying jib and mainsail

Q. How was the weather when you came on deck at four o'clock? A. Well, foggy weather and light breeze.

Q. On what tack was the vessel when you came on deck? A. On the starboard tack. 89

Q. Was the ship tacked or wore round after you came on deck? A. Yes, sir.

Q. How long after? A. As soon as we came on deck at four o'clock we went round.

Q. Where were you at the time of the collision? A. I was at the wheel.

Q. When did you go to the wheel? A. Six o'clock.

Q. How many men were on deck on the *Fred B. Taylor* at the time you took the wheel? A. Seven 90 seamen, the sailmaker, the boatswain, the carpenter, second mate and captain.

Q. And where was the captain standing from six o'clock until the time the collision took place? A. Well, the captain was walking on the port side of the poop.

Q. On what tack was your vessel at that time? A. Port tack.

Q. And how was the wind, and about how was the vessel heading with reference to the wind? A. The 91 wind was about west, southwest.

Q. And how was your vessel heading by compass? A. Northwest.

Q. How was your vessel heading with reference to the wind—was she running free or was she close-hauled or full and by? A. Yes, full and by.

Q. What was the order you received when you took the wheel? A. The man I relieved told me to keep full and by the wind.

Q. As to whether or not, from the time you took 92 the wheel until the time of the collision, any fog signal was sounded on board your vessel—any foghorn was sounded? A. Yes, sir; all the time, the foghorn was blowing.

Q. Who was sounding the horn? A. The man on the lookout.

Q. And what kind of a horn; was it like that one there? (Indicating.) A. The same one, sir.

Q. How often was it sounded? A. Every minute.

93 Q. And when it was sounded, how many blasts were sounded? A. Two blasts.

Q. Was this the same kind of a horn that you used after your vessel first left Havre? A. We didn't use this when we first left Havre.

Q. What kind of a horn was that? A. I don't know the name, but a kind of a pump.

Q. And why was not that sounded afterwards? A. Well, because it did not go well, so we took this one.

94 Q. Did you hear any fog signal after you took the wheel sounded by any other vessel than your own? A. No, sir; I didn't hear anything at all.

Q. And what was the first you saw or heard of the steamship *Trave?* A. Well, the first I saw of the steamer was when the captain sang out.

Q. What did the captain sing out? A. He sang out ahoy, ahoy! two times, I think; and the steamer was very close to us.

Q. What did you see then? A. I see the steamer
95 then, and he told me to put the helm hard up.

Q. What did you do? A. I tried to put the helm hard up, but I had no time to do it; it struck right at the time.

Q. Did your vessel change her course at all? A. No, sir; had no time to do anything.

Q. The steamer went through your vessel and disappeared in the fog, did she? A. Yes, sir.

Q. Well, what became of you? A. Well, I went from the deck—the wheel knocked me down and I fell
96 down in the lazarette.

Q. And you were eventually saved by the boats of the *Trave?* A. Yes.

Q. How, fast, in your opinion, was your vessel going from the time you took the wheel to the time of the collision? A. Well, I cannot tell you just how fast she was going, perhaps four and one-half knots. I cannot tell you, I didn't see the log.

Q. How fast, in your opinion, was the steamship

Trave going from the time you first saw her until the time of the collision? 97

Objected to.

A. I think she was going full speed.

Q. How long was it from the time you first saw the steamer until the collision took place? A. Oh, just a second.

Q. Did you see the *Trave* before the captain hailed her? A. No, sir; because I was looking for the steering. 98

Q. Did you see her as soon as the captain hailed her? A. Yes.

Q. And then did she strike you right off? A. Yes, sir.

Q. How long after the collision did the fog continue after you came on board of the *Trave*? A. Oh, well, it cleared up a little bit after the collision, but it was foggy. I don't know how long, because I was going to bed; I was sick. I didn't look at the weather.

Q. How long before the collision took place had it been foggy? A. Eight or ten days. 99

Q. What was the name of the man on the lookout? A. Oh, well, they called him Ernest on board, but I don't know the other name.

Q. What became of Ernest, the lookout, when you arrived in Southampton? A. I didn't see Ernest at all when he arrived in Southampton.

Q. Have you seen him since? A. No.

Cross-Examination by Judge Shipman: 100

Q. Your time for relieving the watch was four o'clock, was it, that morning? A. We took the watch at four o'clock; yes, sir.

Q. And you came on deck then? A. Yes, at four o'clock.

Q. What was the first thing you did? A. Well, the first thing, I don't know—I don't remember the first thing. I know we set the flying jib, the staysail and mainsail.

Q. What were you doing from the time you came

on deck at four o'clock until you took the wheel? A. Well, we set that sail and then I went to the wheel afterwards, I relieved the wheel at six o'clock,

Q. How many men were on the lookout during the the time between four o'clock and the time of the collosion? A. Well, two men had been on the lookout, one from four to six, and the other man took it at six o'clock.

Q. Now, who was on from four to six? A. The man is there (indicating).

Q. Well, what is his name? A. Olsen.

Q. And it was at six o'clock then, that there was a change of lookout? A. Yes; I don't know if it had been just at six o'clock—I went to the wheel at about six o'clock.

Q. Where was the lookout at six o'clock when you took the wheel? A. On the forecastle head.

Q. Did you see him? A. Yes.

Q. When did you see this lookout, Ernest, relieve the other lookout? A. I didn't see the relief of the lookout, because I was going to the wheel.

Q. So you don't know just when he did relieve him? A. No, sir.

RE-DIRECT-EXAMINATION:

Q. Did you lose your things—your clothes? A. Yes, we lost everything, only what we had on.

Q. Did you make out a list of the things you lost with the prices attached to it, at what would be a fair price for the goods? If so, please produce the list? A. Yes.

Witness produces the list, which is marked Exhibit 3, this date.

(Signed.) RAGUER HYACINTHE.

105

JULIUS W. OLSEN, witness on behalf of the libellants, being duly sworn:

EXAMINED by Mr. Carver:

Q. What is your name? A. Julius W. Olsen.

Q. Are you a Swede? A. No; I am a native of Norway. I belong at Christiania, Norway.

Q. How old are you? A. Thirty-five.

Q. How long have you been at sea? A. Eighteen years.

106

Q. How long have you been in British and American vessels? A. About seventeen years; I have been twelve years out of New York here.

Q. And you were able seaman on board of the *Fred B. Taylor?* A. Yes.

Q. And you shipped on board of her at Havre? A. Yes.

Q. And was on what watch? A. Second mate's watch.

Q. What time did you come on deck on that day? 107
A. Four o'clock in the morning.

(By Judge Shipman:

Q. Was it light then? A. Yes, it was getting light.)

Q. How was the weather? A. Thick, sir.

Q. How was the wind? A. About west, northwest.

Q. On what tack was your vessel at that time? A. On the port tack.

108

Q. About what point of the compass was she heading to? A. I was not at the wheel; I could not tell; I did not look myself.

Q. Did you go on lookout after you came on deck? A. I went on lookout after going about ship.

Q. What time was that? A. It was quarter of an hour after we went about ship.

Q. Just fourteen or fifteen minutes after four o'clock then? A. Yes, sir.

109 Q. And how long did you remain on the lookout? A. I was on the lookout until six o'clock.

Q. And who relieved you on the lookout? A. Ernest, sir.

Q. What did you do while you were on the lookout? A. I was blowing the horn, sir.

Q. Where were you stationed on the lookout? A. On the port bow, sir, most of the time, because I know there are most always steamers coming that way. I was blowing the horn every minute.

110 Q. How many blasts did you blow? A. Two.

Q. Did you hear any fog signal from the time you came on the lookout until the time you were relieved? A. No, sir; there was nothing to be heard at all.

Q. What sort of a horn were you sounding? Like that one there? (Indicating Exhibit 1.) A. Just exactly.

Q. What sort of a sound does it give? A. It is a very good sound; it is one of the best horns that is blown—that has been blown for some years.

111 Q. Who was in command of the ship from four o'clock to the time of the collision? A. The captain, sir.

Q. What did you do when you were relieved by Ernest? A. I was ordered to splice the jib sheet and I was just coming down the step and half way up again when the lookout shouted.

Q. What did he say? A. Oh, he was raising his arms and making a great noise—throwing up his arms, and I cleared out forward again. I saw the ship com-

112 ing and I ran to keep clear myself.

Q. Did you hear any orders? A. I didn't hear anything myself, I was too busy, there was a woman there and she was hollering and crying out and the first thing I know I was in the water with the woman.

Q. You say you were going up the steps. What steps were you going up? A. From the main deck to the gang forecastle.

Q. How far were you from the men on the lookout when he made this report? A. About nine feet.

Q. Did you hear the whistle of the steamer before the collision? A. No, sir; there was no horn blown from the time we left Havre as far as I heard, on board the ship. 113

Objected to.

Q. Did you hear the fog signal of your vessel sounding after you were relieved from the lookout and before the collision took place? A. Yes, he blew the horn twice and he had the horn to his mouth to blow a third time, but he didn't get the chance. 114

Q. How many blasts did he blow? A. Twice, sir.

Q. How long after the collision did the fog continue? A. There was just about half past nine—something like that—just lightened up a little bit, and then it got thick again. I just got a sight to see the boat in the water coming along and then it got thick again.

Q. How long after the collision did the foggy weather continue? A. Oh, there was—the day after we got on board the steamer there was fog; it was foggy about two days after we left the ship. 115

Q. And you were landed at Southampton, were you? A. Yes.

Q. And then you went to London? A. Yes.

Q. And then you came here in the *Persian Monarch* to testify in this case? A. Yes.

Q. What became of the man on the lookout when you arrived at Southampton? A. They told me to look for him and I went to look for him, and I could not find him nowhere, and then afterwards again, I went right aft and there was there the purser or head steward and most of the time they wanted him to go to Bremen—all the time—and I went forward again and asked for him all the time, and nobody could tell me anything about him. 116

Q. Then you haven't seen him since? A. No, sir.

Q. How fast, in your opinion, was your vessel going at the time of the collision? A. About four miles.

Q. How fast, in your opinion, was the steamer going at the time of the collision?

Objected to.

117 A. About fifteen or sixteen knots.

Q. What sail did your vessel have on at the time of the collision? A. Three royals and a spanker and cross-jack were furled.

Q. How far in the fog do you think you could see a vessel from your ship? A. Not more than a half ship's length or ship's length.

CROSS-EXAMINATION by Judge Shipman:

Q. While you were on the lookout, you heard noth-
118 ing except what took place on your own ship? A. No, sir.

A. About how long after Ernest Moil took your place as lookout was it, before he shouted? A. I suppose about ten minutes.

Q. Now, the moment he shouted, did you look to see what was coming? A. Yes.

Q. And what did you see first? A. I see the bow of the steamer.

Q. How long was it from the time the lookout
119 Ernest shouted to call attention to the coming steamer before the steamer struck you? A. About two seconds, I should think; she was right on top of us at once.

RE-DIRECT EXAMINATION:

Q. Did you lose your clothes? A. Yes.

Witness produces list of things as far as he can remember them with what he believes are fair prices of the same, which is marked Ex-
120 hibit 4, of this date.

(Signed.) J. V. OLSEN.

121

EDWARD WALTON, a witness called on behalf of the libellants, being duly sworn:

EXAMINED by Mr. Carver:

Q. You are a native of Sweden? A. I am born of Swedish parents in San Francisco.

Q. How old are you? A. Thirty-nine.

Q. How long have you been at sea? A. Twenty-five years.

Q. How long have you been in British and American vessels? A. Well, I have been sailing in American vessels most of the time. I have only been two or three times in these Nova Scotia vessels. 122

Q. You have been all that time in either British or American vessels? A. Yes, sir.

Q. What was your position on board the *Fred B. Taylor*? A. Boatswain.

Q. Where did you join the *Fred B. Taylor*? A. I shipped over at Havre, but I was on her the last voyage.

Q. How long had you been in her in all? A. About fourteen months. 123

Q. How did you stand watch as boatswain on board? A. I worked all day and slept all night; they called me at five o'clock in the morning.

Q. What time was it that you came on deck on the day of the collision? A. I came on deck at five o'clock. I had nothing to do until after six o'clock, and stood talking to the steward.

Q. What sail did your vessel have on board of her at the time of the collision? A. The royals, the spankers and the cross-jacks were fast. 124

Q. On what tack was your vessel at that time? A. Port tack.

Q. How long had she been on that tack? A. We wore ship at four o'clock in the morning.

Q. How was the wind? A. Somewhere about west southwest.

Q. And how was your vessel heading with reference to the wind? A. Well, I didn't look at the compass, but she generally goes about six points from the wind.

125 Q. Was she close-hauled? A. Yes, sir.

Q. How was the weather? Was it clear or foggy weather? A. Foggy.

Q. How long had it been foggy? A. Oh, we had occasional fogs—well, I don't know exactly about the night as I was asleep. I think it was all night.

Q. Had it been foggy the day before? A. Well, we had fogs, sometimes it cleared up for an hour and then it started in again. Always from the banks of Newfoundland we had that kind of weather.

126 Q. How far could you see a vessel in the fog at the time of the collision? A. I judge about a ship or a ship and a-half's length.

Q. How fast was your vessel going through the water at the time of the collision? A. I guess about four or four and a half knots.

Q. Was any fog signal sounded on board your vessel, if so by whom? A. By the lookout on the forecastle head.

Q. How many blasts were blown? A. Two.

127 Q. What sort of a fog horn was it? Was it like that one there? (Indicating Exhibit 1.) A. Yes, that is what we used on the latter part of the voyage.

Q. Was that the sort of horn that was used on the day of the collision? A. Yes.

Q. What sort of a sound does that foghorn give? A. Very loud sound.

Q. What foghorn did you use before that? A. We had a mechanical horn, one you pull the handle upwards and push it back again, and it gives a sound.

128 Q. Why was that not used? A. Well, it gave out, or rather the sound of it was not half as loud as this gives.

Q. Which horn sounded the loudest, this or the mechanical horn before it gave out? A. This one sounded louder.

Q. This one sounded louder than the mechanical horn when it was in first class order? A. Oh, yes.

A. About what time did the collision take place? A. Well, it was about ten or twelve minutes past six o'clock in the morning.

Q. Where were you at that time? A. Just about so 129
far as it struck—about six or seven feet from where the steamer struck.

Q. Where were you standing on your own vessel? A. Right on the top step going down between decks. Me and the sailmaker were working at the sails.

Q. And what occurred to you when the steamer struck? A. Just as it struck I had no time—the sailmaker he got out of the way first, but I had no time to get out of the way because the steamer struck us and a piece struck me and knocked me right down the 130
hatch again.

Q. Did you see the steamer before she struck you? A. No.

Q. Did you hear any report made by the man on the lookout before she struck you? A I heard a report from the captain.

Q. What was that report? A. Well, the captain holloaed like.

Q. Did you hear the lookout holloa? A. Oh, yes.

Q. What did he say? A. Well, he holloaed out 131
generally like, holloaed out vessel, or a steamer. I could not tell which it was.

Q. Who holloaed out first? A. The captain what I heard.

Q. How long was it from the time the captain holloaed until the time of the collision took place? A. I could not say exactly, but it was not more than a few seconds.

Q. What did you do from the time the captain holloaed, until the time of the collision? A. Do? We 132
had no time to do anything, because there was no time to turn around.

Q. Where was the second mate and the rest of the crew? A. Well, they were busy on deck trying to start the work about amidships.

Cross-Examination by Judge Shipman:

Q. What part of the steamer did you see? A. I didn't see anything of her before she struck us.

Q. And she was right on you? A. Yes.

133 Q. Whereabouts on the ship was the lookout stationed? A. On the fore part, right forward on the forecastle head, just as far forward as you can get.

Q. How far from the point where the lookout stood to the stem of the ship? A. About three feet.

Q. Did he stand on the forecastle head or walk back and forward? A. He was on the forecastle head.

Q. And how far were you from the lookout, at the time of the collision? A. Oh, I was away aft amidships.

134 Q. Where was the captain standing when he made the noise? A. He was on the port side, close by the the man at the wheel.

RE-DIRECT EXAMINATION:

Q. You lost your clothes? A. Oh, lost everything.

Q. Have you got a list of what you lost? A. Yes, sir.

135 Witness produces said list and states, that this is a list of what I lost as far as I remember, with the fair prices of the values. Said list marked Exhibit 5 of this date.

(Signed,) EDWARD WALTON.

136

137

EDWIN F. HURLBURT, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. Carver:

Q. You were the master of the ship *Fred B. Taylor* at the of the collision with the *Trave*? A. Yes.

Q. And you left Havre on the 12th of May last? A. Yes.

Q. What was the condition of the weather after you left Havre? A. All the way down channel we had 138
thick hazy weather; all the way down the channel.

Q. Foggy? A. Yes, sir; sometimes fog and sometimes hazy.

Q. You left Havre on the 12th of May? A. Yes, sir.

Q. And the date of the collision was—A. The 22d of June.

Q. What time was it that morning that you came on deck? A. I came on deck at ten minutes to four.

Q. Were you on deck at the time of the collision 139
with the *Trave*? A. Yes, sir.

Q. On what tack was your vessel? A. We was close-hauled on the port tack.

Q. Were any of your sails furled,? A. The three royals were furled, cross-jack and spanker.

Q. How many men did the *Fred B. Taylor* carry? A. She had at this time twenty-two, all told.

Q. Including yourself? A. Including myself.

Q. On what course was you heading from the time you came on deck till the time of the collision? A. 140
We wore ship at four o'clock. We had been heading to the southward all night, and at four o'clock we wore ship and headed northwest; from four o'clock until the time of the collision we were heading northwest.

Q. How with reference to the wind? A. The wind was west southwest.

By the Court:

Q. You say you headed northwest by compass? A. Yes, sir.

141 Q. Straight by compass; due? A. Northwest by compass, yes, sir.

By Mr. Carver:

Q. What date was it prior to that time that you had last taken an observation of the sun? A. On Saturday, the 18th.

Q. How was the weather between the 18th and the time of the collision? A. It was foggy all the time; I had only had one observation in fourteen days.

142 That was the only observation I had had in fourteen days.

By the Court:

Q. When was that? A. On the 18th. Fourteen days altogether I had thick fog before the collision.

By Mr. Carver:

I understood you to say that during this period of fourteen days this one on the 18th was the only observation you did have? Yes, sir.

143

By the Court.

Q. You had been out from the 12th of May? A. Yes, sir.

Q. You had been on the way all the time from the 12th of May? A. Yes, sir; forty one days we were out when the collision occurred.

Q. And had only had one observation? A. No, sir; only had one observation for fourteen days before the collision occurred.

144 By Mr. Carver:

Q. You were bound for Sandy Hook? A. Yes, sir.

Y. Your vessel was in ballast? A. Yes, sir.

Q. How large a ship is the *Fred B. Taylor*? A. She was 1799 tons.

Mr. Choate: We accept the measurments stated by Mr. Putnam.

Q. When you came on deck whose watch was it on deck? A. When I first came on deck it was the mate's. The mate called me at ten minutes to four o'clock.

Q. At six o'clock who was on deck? A. The second mate and his watch. 145

Q. At six o'clock were the wheel and lookout changed? A. The wheel and the lookout was changed at six o'clock.

Q. Who went to the wheel? A. This Hyacinthe.

Q. Who went on the lookout? A. He was a German. I forget his name but he went by the name of Fred aboard the ship; but what his name was I forget; I think I have it.

Mr. Carver: Moll is the name. 146

By the Court:

Q. He is the one you have not been able to find? A. Yes, sir.

By Mr. Carver:

Q. And those men remained at their stations until the time of the collision? A. Yes, sir.

Q. Who else was on deck? A. The second mate and his watch and the boatswain was on deck. 147

By the Court:

Q. This was the second mate's watch? A. Yes, sir.

Q. He came on at six o'clock? A. He came on at four o'clock.

Q. Wasn't there a change at six o'clock? A. A change of the wheel and lookout at six o'clock.

Q. Not of the officer in charge? A. No, sir. They had two hours apiece on the lookout and wheel. The second mate came on deck at four o'clock and two 148 of his men; one went to the wheel and one to the lookout; and at six o'clock the lookout and wheel was changed.

By Mr. Carver:

Q. How was the weather at six o'clock? A. Thick fog.

By the Court:

Q. You made these changes by your own clock, did you? A. Yes, sir.

14 Mr. Carver: With regard to the time, I should like to state that the difference in time between those on the *Taylor* and those on the steamer is probably due to the fact that the sailing ship was sailing on corrected standard time, and that they had not had an observation for a long while.

Q. Do you know what time it was by your clock at the time of the collision? A. About fifteen minutes past six by our clock.

Q. Did you change your clock every day according
150 to your dead reckoning? A. Yes, sir.

By Mr. Carver:

Q. Where did you place the vessel at the time of the collision; how far from Sandy Hook? A. About 270 or 275 miles.

Q. By dead reckoning? A. By dead reckoning.

By the Court:

Q. You calculated that you were 275 miles from Sandy Hook? A. Yes, sir.

151 Q. The steamer gives it 247; that would make you about thirty miles further than you supposed? A. Yes, sir.

By Mr. Carver:

Q. What time had the fog shut in? A. It had been thick fog all the time.

Q. All that night? A. Yes, sir.

Q. Had you been up and down during the night? A. Yes.

152 Q. Had you had your fog signals sounded? A. Fog signals going all the time; two blasts every minute.

Q. When on which tack? A. On the port tack. One blast every minute on the starboard tack.

Q. Was the fog signal sounded regularly from six o'clock until the time of collision? A. Yes, sir.

Q. Who sounded the foghorn? A. The man on the lookout.

Q. What sort of a breeze was blowing between six o'clock and the time of the collision? A. Moderate breeze.

Q. How fast do you think your vessel was going through the water? A. We was going about 4½ miles an hour. 153

Q. Where were you standing at six o'clock? A. I was standing about fifteen feet from the stern, right abreast of the wheel; right alongside of the wheel.

Q. How with reference to the after part of the after-house? A. About eight or ten feet from the after part of the after-house.

Q. On which side? A. On the port side.

Q. The port side was the windward side? A. The port side was the windward side. 154

Q. And the port side was the side you struck on? A. Yes.

Q. As to whether or not from six o'clock to the time of the collision you heard any fog signals of any other vessel? A. No, sir; none whatever.

Q. What was the first that you knew of the approach of the steamer? A. The first I thought I heard something to windward.

Q. What kind? A. I thought I heard something to windward. It sounded to me like a steamer rushing through the water; and I went over to the rail to listen and directly I got there I seen the bows of the steamer coming out of the fog. 155

Q. Did you see her masts? A. I seen her bows first and then afterwards her masts.

Q. Where were you standing when you saw her bow? A. I was standing about fifteen feet from the stern, right up against the rail.

Q. And this steamer struck you; that you saw? A. Yes. 156

Q. And that was the *Trave*? A. Yes, sir.

Q. Did you see her when she struck you? A. Yes, sir.

Q. Where did she strike your vessel? A. She struck, as near as I could tell, about from ten to fifteen feet forward of the mizzen rigging.

Q. How far was that from where you were standing? A. That would be about forty to forty-five feet from where I was standing.

157 By the Court:

Q. You stood aft of the mizzenmast? A. Yes, sir.

By Mr. Carver:

Q. Did you notice how the two vessels came together? A. I should judge, of course I couldn't tell exactly; but where I was standing, I should judge from three to four points; an angle of from three to four points.

(At the request of the Court the witness places mo-
158 dels showing how the vessels came together, making the forward angle on the ship about three or four points.)

Q. After the collision what became of you? A. The next thing I knew I was in the water. We had quite a large deckhouse, and that was on top of me. I got up on top of that and looked around and looked to see what I could see. I couldn't see the steamer; she had gone out of sight. The bows of the sailing ship was about 25 or 30 feet from me, gradually going
159 down by the stern.

Q. That was the bow? A. Yes, sir.

Q. Did you see the stern? A. The stern of the ship was about ten or fifteen feet from me, laying over, the port side down and the starboard side up, and I took notice of the starboard side, and I should judge that it was cut off from five to ten feet abaft the mizzen rigging.

Q. How wide is your ship at the mizzen rigging? A. It would be about forty feet.

160 Q. Were they entirely separated apart? A. Entirely separated; yes, sir.

Q. And you say that the bow was from 25 to 30 feet from you? A. On one side.

Q. And the stern in the opposite direction? A. In the opposite direction; I was between the two.

Q. In other words, they were about 45 feet apart? A. Yes, sir.

Q. You say the stern was down on its—— A. Port side.

Q. That is, the port side was under water? A. Under water. 161

By the Court:

Q. Was the sun visible so you could tell which way you were looking? A. Yes, sir; the sun was shining over the top of the fog.

Q. You could see where the sun was, could you? A. Yes.

Q. How were those two parts of the wreck placed in reference to the sun, do you recollect? A. The bows was, as I judged, heading about the same as she was when she was struck, pointing to the westward and northwest, and the stern was swung around; the starboard side of her was towards the bows of the ship, and it kept swinging around and around, and that was going to the eastward. They were parting and the stern going to the eastward and the bows going to the westward, and I looked to the eastward for the steamer and couldn't see her. 162

By Mr. Carver: 163

Q. Did you see anything of the mizzenmast? A. Yes, sir; I seen the mizzenmast floating around there in pieces from ten to fifteen feet long. One of them come so close to me that I put my hand on it and shoved it away.

Q. With regard to the stern of the vessel, could you see the starboard side of the stern of the vessel? A. Could see the starboard side distinctly; it was laying up.

Q. Could you see any rigging attached to it? A. No, sir; there was no rigging attached to the starboard side. 164

By the Court:

Q. The starboard side was to the southward, as you say? A. Yes, sir; southward and eastward.

Q. She had turned around? A. Yes, sir.

Q. And you were between the two? A. Yes, sir.

165 By Mr. Carver:

Q. How long was it, do you think, before you saw the steamer again? A. It appeared to me, being in the water, to be a pretty long time, and I thought at the time about an hour and a half, but I should judge about three-quarters of an hour. I was sitting on the house, but the house was under water.

Q. Was anybody else with you? A. Yes, sir; the man at the wheel was in the water and he swam and got on the house with me.

166 Q. Was he the only one that got on the house? A. Yes.

Q. Where were the others? A. The second mate was in the water, and he swam and got on the stern of the ship; he got hold of the patent log that was in the water and threw it to us so we could get on the stern of the ship in case the steamer didn't come back and pick us up.

Q. Was the stern of the ship so you could observe its position accurately? A. Yes, sir; I could see it
167 distinctly, and I should judge from where she was struck and cut off on the starboard side about from five to ten feet aft of the mizzen rigging.

Q. You said that she was struck on the port side forward of the mizzen rigging? A. Yes, sir; about ten to fifteen feet forward.

Q. How wide is the spread of the mizzen rigging fore and aft? A. Fore and aft 25 feet.

Q. Did you receive any injury from the collision? A. Yes, sir; I was in the water and one of my legs
168 was injured so it was useless to me when I was picked up in the boat.

Q. Then you went on board of the steamship *Trave*? A. Yes.

By the Court:

Q. Hasn't your leg recovered? A. Yes, sir; partly recovered; it bothers me some now.

Mr. Choate: No claim is made for the injury.

By Mr. Carver: 169

Q. You went on board the steamship *Trave* with the rest of your crew? A. Yes, sir.

Q. Were all the crew aboard of her? A. I didn't know who went aboard of her at the time. I was one of the last men that went aboard. I was hauled over the side. They were all aboard before me and I didn't know who was on board.

Q. Do you know what became of the mate and carpenter? A. I should judge that the mate was killed in his room. 170

By the Court:

Q. You mean you didn't see him? A. He never was seen afterwards; nor the sailmaker. The sailmaker was seen and was drowned; he was seen by one of the men.

Q. But you didn't see him? A. I didn't see him; no, sir.

Q. All the rest were taken on board the *Trave?* A. Yes. 171

By Mr. Carver:

Q. What kind of a foghorn did your vessel use when she left Havre? A. We had a mechanical foghorn; it was a kind of a pumphorn.

Q. How long was that used? A. It was used all the time that we had thick weather up till about four days, I think, as near as I can remember, before the collision; four or five days.

Q. How much thick weather did you have after leaving Havre? A. It was about ten days in the 172
English Channel I was using it, and about fourteen days before the collision.

Q. Then what was the trouble with the horn? A. Something got the matter with the valve and I couldn't find out what it was. I overhauled it and it failed to make a proper noise; and then I used this other one.

Q. What kind of a horn is that for sound? A. It is in my opinion as good as most of the mechanical horns that ever I seen.

173 Q. Could you hear that when you were in your cabin and they were in the forecastle? A. Yes, sir.

Q. Have you heard it? A. Heard it lots of times.

Q. As to whether or not, prior to this and while you had a fog you saw any other steamer? A. Yes, sir.

By the Court:

Q. I understand you; the one you had the mechanical appliance for was not a horn of this shape? (Re-
174 ferring to horn in court.) A. No, sir.

Q. When you ceased to use that, then you used one like this? A. Yes, sir.

By Mr. Carver:

Q. Whether or not a few days before this you saw any other steamer? A. Yes, sir; a few days before that it was thick, and I heard a steamer's whistle.

Q. Do you remember what day that was? A. I couldn't say; I think it was Sunday I heard a
175 steamer's whistle. It was very thick at the time, and it appeared to be bearing about two points on the port bow, and we were sounding on the same horn. She came up, kept coming closer; and, by and by she came in sight and was going when she came in sight very slow; and when she seen us she changed her course and went past us; and I thought by the looks of her it was a North German Lloyd boat, by her funnel.

Q. She was going in what direction? A. She was
176 going east.

Q. What time in the day was that? A. That was about ten o'clock in the forenoon, I think.

Q. Whose watch was it on deck? A. The mate was on deck.

By the Court:

Q. How near to you do you think she came? A. She came within two lengths of my vessel; about 400 feet I should judge.

Q. Did she go across your bow or under your stern? 177
A. Under our stern.

Q. How far off do you think the *Trave* was when you first saw her? A. I should judge she was about two lengths of my steamer off.

Q. And that is about how many feet? A. About 450 feet; something like that.

Q. How old was the vessel? A. She was built in 1883; she was nine years old.

Q. Wooden vessel? A. Yes, sir.

Q. With regard to her timbers; do you know what 178
the thickness of her planking was? A. The thickness of her planking outside was nine inches, I think.

Q. Do you know the thickness of her timbers? A. Her timbers, I think, was eleven.

Q. Do you know how high her keelson was? A. Six feet in height.

Q. How wide? A. About eighteen inches wide; pitch pine.

Q. Was it one piece of wood? A. No, sir; it was 179
pitch pine logs, one top of the other.

Q. Bolted down? A. Bolted through.

Q. How high up from the bottom of your vessel did the ballast come? A. In the main hatch it came up about ten or twelve feet, and then it tapered off both sides.

Q. Do you know how deep the keel of your vessel was? A. The keel was about twelve inches, I think.

Q. Do you know about how wide it was? A. About eighteen inches: about the same as the keelson. 180

Q. What was that? A. That was oak.

Q. You say you were picked up, and where were you landed? A. Southampton.

Q. Who was landed with you? A. All of the crew, excepting the two that was lost, and the man that was on the lookout.

Q. What became of the man on lookout? A. I never seen him from the time he went aboard the steamer; I have never seen him since.

Q. Do you know anything about where he lives?

181 A. He was a German; I couldn't say; I think he was a German; I couldn't say what part of Germany he lived in.

Q. Where did you ship him? A. In Havre.

Q. Had you ever seen him before? A. No, sir.

Q. When you were landed at Southampton the *Trave* went on to Bremen, did she? A. Yes, sir.

Q. You came from Southampton where? A. I went from Southampton up to London first, and I came from London out to New York. I was in Guy's
182 Hospital in London.

Q. When you came to New York did any of the crew come with you? A. Yes, sir.

Q. These four men referred to in the depositions? A. Yes, sir.

(The cross-examination was suspended to allow of the examination of expert witnesses.)

CROSS-EXAMINED by Mr. Choate:

183 Q. How long did you say you had been a master of vessels? A. Two years and a half.

Q. Always on sailing vessels? A. Always on sailing vessels.

Q. Where was your cabin situated on the *Taylor*? A. In the after part of the ship.

Q. How far from the stern? A, About twenty feet.

Q. Was it in the house on deck? A. In the poop. The house on the poop deck ran right forward about fifty or sixty feet forward. It was in there.

184 Q. Had it windows? A. Yes, sir.

Q. On the side of the ship or in front? A. It had windows on the side of the house and on the front both.

Q. And in summer time I suppose those windows are more or less open, are they not? A. Yes, sir, in dry weather.

Q. When you speak of your course as being northwest, are you speaking from your own recollection of what you saw of the compass? A. Yes, sir.

Q. How long before the collision had you looked at 185
the compass? A. Not more than five minutes.

Q. It was then northwest? A. Yes, sir.

Q. Did you give any order to the man at the wheel after you saw the bow of the *Trave*? A. Yes, sir; just before she struck I told the man to put his wheel hard up.

Q. Did you see him move his wheel? A. Yes, sir; he made about one revolution of the wheel, not more.

Q. Was it immediately after you saw the bow of the *Trave* that you gave this order? A. No, sir; it was 186
not immediately after; it was just before the *Trave* struck the ship.

Q. In your judgment how many seconds was it from the time you first saw the bow of the *Trave*, saw she was a ship, before the collision? A. In my judgment from the time I seen her till the time she struck us, it wasn't more than thirty seconds.

By the Court:

Q. Hard up would tend to throw your head to port, 187
would it? A. To starboard.

By Mr. Choate:

Q. You intended to throw her head to starboard, if you could? A. Yes, sir.

Q. You didn't observe the compass between five minutes before the collision and the collision? A. Yes, sir; as soon as I seen the ship I walked to the compass and walked back to the rail, and she was heading directly northwest.

188

Q. Then you did see the compass? A. I did see the compass just before she struck.

Q. After the time you have mentioned; A. Yes, sir.

Q. You stated just now that the last time you saw it was five minutes before. On reflection you change that? A. I didn't mean to say that the last time I saw it was five minutes; I meant I saw the compass five minutes before; but just as I seen the steamer I walked to the compass, when I heard this sound of

189 rushing through the water. I was then standing at the compass and I walked over to the rail; and it wasn't over a minute.

Q. You heard this noise like a swash of water on your port hand? A. On the port side.

Q. Then you looked in the direction, of course? A. Yes.

Q. You went to the rail, I understand you? A. Walked up to the rail, yes, sir.

Q. You then went to the compass? A. I was stand-
190 ing by the compass when I heard it.

Q. You walked to the rail, or ran to the rail, and looked in that direction? A. Yes, sir.

Q. And the first thing you made out by your eyes was the bow of the steamer? A. Yes, sir.

Q. At that time couldn't you see the masts? A. I didn't notice the masts.

Q. Perhaps you didn't throw your eyes high enough? A. I didn't notice the masts, no sir.

Q. But the masts came in sight, didn't they, before
191 she struck? A. Yes, sir.

Q. As she came nearer you caught the idea that it was a large steamer? A. Yes, sir.

Q. Coming rapidly towards you? A. An ocean steamer going at what I thought was full speed.

By the Court:

Q. How long after you got the rail should you think it was before you saw her bow? A. From the time I got to the rail until they struck—about thirty seconds.

192 Q. Till you saw her bow? A. It wasn't more than five seconds from the time I got to the rail that I seen the steamer.

By Mr. Choate:

Q. Saw the bow? A. Saw the bow.

By the Court:

Q. You imagine from that time until the collision was the rest of the thirty seconds? A. Yes, sir.

By Mr. Choate: 193

Q. Did you expect that there would be a collision from the time you saw her bow? A. Yes, sir.

Q. You felt pretty sure of it? A. I felt sure of it.

Q. The only question with you, I suppose, was whereabouts she would strike? A. Yes, sir.

By the Court:

Q. Did you form any judgment at the time how far off the steamer was when you saw her bow? A. Yes, sir, when I saw her bow I should judge she was about 194 two lengths of my ship off.

By Mr. Choate:

Q. What was your first idea of where she would strike you when you first formed an idea of where she would strike you? A. I don't know as I formed any idea of where she would strike the ship, but I watched to see about where she would strike.

Q. Did you notice that she was likely—or what did you think at first—that she would strike a little further forward than she did? A. No, sir, I thought she 195 would strike pretty well aft when I first seen her.

Q. I understand that you and the man at the wheel stayed very near where you were? A. Yes, sir.

Q. The man at the wheel stayed at the wheel, did he? A. Yes, sir.

Q. Did he stay at the wheel until the vessels struck? A. Until she struck; yes, sir.

By the Court:

Q. At the very moment of collision where were 196 you? A. Standing by the rail on the port side.

By Mr. Shipman:

Q. Whereabouts on your ship? A. About fifteen feet from the stern.

By Mr. Choate:

Q. Do you know whose patent or whose manufacture this mechanical fog horn that you had on board was? A. No, sir, I couldn't tell you.

197 Q. Have you ever seen any of the kind here in New York? A. No, sir, not in New York. I have seen them aboard of ships.

Q. Do you know how long that mechanical fog horn had been used? A. No, sir, I don't know how long it had been used.

Q. How long had it been in the *Taylor?* A. I couldn't say that; it was in her when I took her.

Q. Was this your first voyage on the *Taylor?* A. Second voyage.

198 Q. When did you join the *Taylor* the first time? A. I joined her in February, 1890, I think.

Q. Is it something that stands on the deck? A. Yes.

Q. And has a handle that goes up and down? A. Yes, sir.

Q. Is it fastened to the deck? A. Yes, sir.

Q. And then it has a branching mouth-piece out of which the sound comes? A. Yes, sir.

Q. About how high is it from the deck? A. I
199 should judge about 2½ feet to 3 feet.

By the Court:

Q. You call it a mouthpiece; it isn't where you put your mouth? A. No, sir; sounding horn.

Q. The pumping work makes the breath of the horn? A. Yes.

By Mr. Choate:

Q. I didn't mean a place where you put your mouth, I meant the mouth of the instrument out of
200 which the sound came. A. Yes, sir.

By the Court:

Q. The pumping with the handle makes the sound? A. Yes.

By Mr. Choate:

Q. This other one that you were actually using at the time of the collision; was it about the size of this one that has been produced in court? A. Just the same.

Q. Was the one you used of this shape and size? 201
A. Yes.

Q. Do you know what these are; are they French or English? A. They are French; I bought mine in France.

Q. Did you have more than one of these on your vessel? A. No, sir.

Q. You had one mechanical horn and one like this? A. Yes.

(The horn referred to is marked Claimants' Exhibit No. 1.) 202

Q. You referred to seeing a steamer on Sunday; that steamer was going east? A. Yes, sir.

Q. You said you thought it was one of the North German steamers; what led you to think it was one of the North Germans? A. By her funnel; yellow funnel.

Q. She had a yellow funnel? A. Yes, sir.

Q. How many masts had she? A. I didn't notice how many masts she had. 203

Q. It was about ten o'clock in the morning? A. Yes.

Q. You had heard her whistles before you saw her? A. Yes, sir, some time before we saw her.

Q. If I got down your statement right, when you saw her she was going slow? A. Appeared to be going slow.

Q. And that she passed you about two or three lengths from you? A. Yes, sir.

Q. Did you mean lengths of your ship? A. 204
Yes, sir.

Q. It would be then about from 500 to 750 feet; something like that? A. About 500 feet.

Q. How far away from you do you think she was when you first saw her? A. I should judge she was about the same distance when I first saw her on our port bow; we was on the port tack.

Q. You were then on the port tack at that time? A. Yes.

Q. And she went under your stern? A. Yes, sir.

205 Q. You said I think that you thought she was changing her course when you saw her? A. Yes, sir, she changed her course after I saw her; when she saw us she changed her course.

Q. You can tell about your seeing her, but you can't tell about her seeing you? A. No, sir.

Q. She was in full sight of you when you thought she changed her course? A. Yes, sir.

Q. And she headed more to the south? A. More to the south, yes, sir, to cross our stern.

206 Q. Was there a marked change on her part? A. Yes, sir; I saw her distinctly change.

Q. You saw her first going in one direction and then change to another? A. Yes, sir.

Q. She didn't remain in sight long? A. No, sir.

Q. A very few minutes she was in sight? A. Yes, sir.

Q. Where was the *Taylor* built? A. Tusket, Yarmouth County, Nova Scotia.

Q. When you were on the floating house, partly in
207 the water, you saw both parts of your vessel? A. Yes, sir.

Q. And the stern part was port side down, wasn't it? A. Yes, sir.

Q. Port side in the water? A. Yes, sir.

Q. You couldn't see the port side? A. No, sir.

Q. That was under water? A. Under water.

Q. But the starboard side stuck out so that you could see it? A. Yes, sir.

Q. I understood you to say that you never saw your
208 lookout, this man Moll, after you went on board the *Trave?* A. No, sir; I haven't seen him since.

Q. Did you inquire for him on the *Trave?* A. I was told by the captain of the *Trave* that I wasn't allowed to see my crew.

Q. I didn't you ask that question. I asked you if you looked for him? A. No, sir; I could not look for him; I was disabled.

Q. Did you send any of your men to ask him to come and see you? A. No, sir; because I was told I couldn't see any of my men.

Q. You say that the captain of the *Trave* told you 209
that? A. Yes, sir.

Q. Give his exact words. A. The captain was down in the room and we was talking, and the captain of the *Trave* says to me, "You know, captain, that I can't allow you to see your crew." And I says "Why?" He says, "Because you are in the first cabin and they are forward." I says, "Can't I see my second mate and steward? I don't know who of my men are on board of this ship and who is lost. I should like to see my second mate and steward, some 210
of my crew." And he turned around and went out of the room without making any reply.

Q. What is the name of the captain of the *Trave?* A. I just forget the name; it is a peculiar name to speak, and I just forget it.

Q. Was it Reimcasden? A. Yes, sir; I think that is the name.

Q. When did this conversation take place? A. The same day that I went on board of the *Trave.*

Q. And do you say that you didn't find out when 211
you were on the *Trave* how many men of your men were saved and how many were lost? A. No, sir; I didn't say that I didn't find out. I said I didn't know when I first went on board, and I wished to see my steward and second mate to find out; and he left the room without making any reply. Afterwards my second mate and steward did come to see me and I found out.

Q. Then your second mate and steward did come? 212
A. Yes.

Q. The same day? A. It may have been the same day. I think it was in the afternoon or evening of the same day.

Q. Had you seen the captain between the time when he went out without saying anything, as you say, and their coming in to see you? A. No, sir; I don't think I had. I think the captain was only down in my room once that day, and that was shortly after I was taken on board.

213 By the Court:

Q. You said you saw the second mate and steward? A. Yes, sir.

Q. Did they come to you or did you go to them? A. They came to my room, for I couldn't get around at all.

By Mr. Choate:

Q. You were confined to your room all the voyage? A. All the voyage. I got on deck the day before we
214 got in, but I had to have two men to help me out.

Q. Your leg was disabled? A. Yes, sir.

Q. You learned from the mate and the steward who were saved and who were lost? A. Yes, sir.

Q. When you left the ship at Southampton did you see the rest of your crew who left there? A. Yes, sir; I seen them, all that went ashore with me; we all went ashore together.

Q. Who were they that did not go ashore? A. The man that was on the lookout.

215 Q. This man Moll? A. He did not go ashore.

Q. There was one other, wasn't there? A. No, sir; they all went ashore but him.

Q. Those who were saved from the wreck were twenty men and one woman? A. Twenty all told; nineteen men and one woman.

Q. The woman was the wife of the steward? A. Yes.

Q. Have you given all that Capt. Reimkasden told you in that conversation about seeing the men? A.
216 I think that is about all; I think that is all, yes, sir.

Q. What quarters on the *Trave* did they give you? Q. They gave me a stateroom just off the *Trave's* saloon, a little ways, I think it was abaft; a nice room.

Q. What they call a first class-passenger's room? A. Yes.

Q. And the mate and steward came to see you there? A. Yes, sir.

Q. In giving the angle at which the vessels struck, you don't undertake to be exact, do you? A. No, sir.

Q. It is the best you can do from your recollection of the facts? A. Yes. 217

RE-DIRECT by Mr. Carver:

Q. As to whether or not when you heard this fog-horn and were in your cabin the cabin windows were closed or open? A. They were closed; always closed in thick fog.

Q. You said also that the Sunday before the collision when you passed this other steamer you heard her fog signal? A. The steamer's fog signal. 218

Q. On which tack was your vessel at that time? A. On the port tack.

Q. And she came from the windward? A. Yes, sir.

Q. As to whether or not you sounded your fog signals two blasts at that time? A. We sounded our fog signal two blasts right straight along.

Q. And it was the same fog signal that you had here? A. Exactly the same.

Q. As to whether or not your fog signals were answered by those on board the steamer? A. Yes, 219 sir; they were answered.

Q. Were they answered before the steamer came in sight? A. Before I seen the steamer they were answered.

Q. How fast do you think you were going through the water at that time? A. At that time we were going about six knots.

Q. Did you see the place where the *Trave* struck your vessel? A. Yes, sir; about, as near as I can tell.

Q. Could you see as to whether or not it was for- 220 ward of the mizzen rigging? A. Yes, sir; it was pretty well forward the mizzen rigging; I should judge about 15 feet.

Q. Which way were you looking? A. I was looking directly at her from the stern. I was about 45 or 50 feet from her, and I was looking right where she struck on the side.

Q. What kind of a wheel did you have on board your vessel? A. The old fashioned steering gear with chain wheel-ropes.

221 Q. How many revolutions does it take to put your wheel hard over one way or the other from the time that it is amidships? A. I don't exactly know, but I should judge it would take about eight or ten.

Q. You say that you purchased this horn in Havre? A. Yes.

Q. As to whether or not before that time, before coming to Havre, you had any other horn besides the mechanical horn? A. Yes, sir; we had.

Q. What kind of a horn did you have? A. It was
222 also a mouth horn.

Q. What kind was it; like this, or was it tin? A. No, sir; it was a tin horn.

Q. How long? A. About three feet; I should judge three and a half.

Q. What became of that horn? A. They had it out on deck when we was cleaning the place one day and it got stepped on and broken.

Q. And is that the reason that you purchased this horn in Havre to take its place? A. That is the
223 reason I purchased this.

Q. Is it customary aboard of British sailing vessels to have an ordinary foghorn as well as a mechanical foghorn? A. Yes, sir; in all vessels I have been in we had a mechanical horn and also a mouth horn.

Q. To be used in case the mechanical horn wouldn't work? A. In case of an accident, yes.

Q. Did you make any inquiries for your lookout when you arrived at Southampton? A. Yes, sir; I made inquiries from the—I don't know his name,
224 the doctor that attended me. I didn't know the officers,—only the mate.

Q. The doctor of the ship? A. Yes, sir; I asked him if he had seen him, and I asked my second mate if he knew where the lookout was. He said he didn't know. He hadn't seen him that day and he couldn't find him.

Q. Did you make any inquiries of the crew with regard to the whereabouts of the lookout when you arrived at Southampton, when you were landed? A. Of whose crew? Mine?

Q. Yes. A. Yes, sir; I asked— 225

Mr. Choate objects to what was said, but does not object to the fact.

Q. Did you make inquiries of anybody aboard the steamer besides the doctor? A. No, sir; I don't think I did. I asked the doctor that morning if he had seen him.

Q. Was Moll landed with you at Southampton? A. No, sir; he was not.

Q. Did the steamer go to the wharf at Southamp- 226
ton? A. No, sir.

Q. You were landed from a boat, were you? A. Steam tender.

Q. Who were put on the tender first, you or the crew? A. We all went off together.

Q. You were carried aboard the tender? A. Yes, sir; my second mate and steward helped me aboard the tender.

Q. You came with these men from London to New York in another ship? A. Yes, sir. 227

Re-cross by Mr. Choate:

Q. You went on the tender, I suppose, with the passengers who were landed there, didn't you? A. Yes, sir.

Q. All went off together? A. I waited till the other passengers went because I had to be carried down. I was about the last one that was carried down.

Q. You went out on the same tender, and then they 228
went up to the city and the steamer proceeded? A. Yes, sir.

Q. You say you asked the doctor if he had seen Moll? A. Yes, sir; if he had seen my lookout.

Q. How would he know who your lookout was? A. He knew who he was, because he had been—the second mate told me that he had been attending some of the crew that complained, and he knew who he was. That is all I know. My second mate told me that he knew who Moll was.

229 Q. Did you call him Moll or lookout? A. I called him Fred; I didn't know his name. That is the name he went by on board my vessel.

Q. This was the doctor of the *Trave?* A. Yes, sir.

Q. The second mate that you made inquiry of was your second mate? A. Yes, sir.

Q. What was the answer which the steamer made, as you supposed, to your fog signal on Sunday? A. He blew his whistle; as soon as I would blow my foghorn
230 he would blow his whistle.

Q. You blew your foghorn at regular intervals? A. Yes.

Q. About a minute? A. Yes, sir.

Q. Didn't the steamer blow her whistles at regular intervals? A. Yes, sir; but before I seen the steamer I blew my foghorn—he blew his whistle first and I answered him directly with the foghorn, and he answered me directly again with his steamer's whistle; and I answered directly, and he answered the second time
231 directly.

Q. You mean you were blowing along alternately, you and he, don't you? A. Yes, sir; but at this time we didn't confine ourselves to a minute. We blew directly his blast was done. Directly ours was finished he blew his horn to let us know he heard it.

Q. Then when you were blowing, as you say, to each other you were blowing at shorter intervals? A. At shorter intervals.

Q. On both sides? A. On both sides.

232 Q. And that led you to think that he heard you and answered? A. Yes, sir; that led me to think he heard my whistle and answered.

By the Court:

Q. Why did you wear around at four o'clock that morning? A. Because she had broken off; we had been heading south that night; the mate called me at ten minutes to four and told me she had broken off to south, southeast. The wind had broken the ship off from south to south, southeast, and we was bound to

New York and we were making too much eastward, so I wore around on the port tack. 233

Q. I merely asked you, why in coming around you wore around? A. Because I always wear around in thick fog to keep the vessel under command so as not to let the vessel get aback. Always do it in thick fog.

By Mr. Choate:

Q. After you saw the bow of the *Trave* you kept a pretty good watch of her? A. Yes, sir, I did; I watched her sharply. 234

Q. You didn't keep a lookout at the wheelman? A. No, sir; I didn't; I hadn't very much time to look.

Q. Did I understand you to say that you state from recollection now that on that particular voyage while you were in your cabin you heard this horn? A. Yes, sir.

Q. In the bow? A. Yes, sir.

Q. Near the bow of your vessel? A. Yes, sir.

Q. With your windows closed? A. Yes, sir. 235

Henry Walker, being duly sworn and examined as a witness for the claimant, testified:

By Mr. Shipman:

Q. You reside in England when you are at home? A. At Liverpool.

Q. How long have you been to sea on steamships? A. Since 1865. 236

Q. How long have you been a master of steamships? A. I have been master in the Cunard Company for 18 years.

Q. You are now captain of the *Etruria?* A. Yes, sir.

Q. She is going to sea this week? A. On Saturday, yes.

Q. Have you been for 18 years passing between New York and Liverpool? A. I have been 26 years passing between New York and Liverpool. I have

237 been 26 years in the Cunard Line; 18 years as commander.

Q. When did you take command of the *Etruria?* A. Last month, January. I commanded the *Etruria* four years ago when Captain Cook resigned.

MR. CARVER: We admit that Captain Walker is an expert.

Q. This is a question arising out of a collision between the *Trave* and the *Fred. B. Taylor* by which, as
238 I will explain to you, the *Taylor* was sunk. Assume that the collision in question occurred about 250 miles from Sandy Hook, at 6:30 A. M. of June 22d, 1892, while *Trave* was steering usual eastward course E. 1/4 S.; that from time *Trave* left New York up to 6:10 of morning of collision it was nice, clear weather; that at 6:10 fresh breeze from W. S. W. and low haze on surface of water; that compartments were closed and engine put on "attention;" that at 6:20 *Trave* passed steamship going westward, about two miles off; that
239 no fog signals were blown by either ship and that officers on *Trave* could see her quite distinctly; that soon after 1st officer made preparations to take an observation, sun being about one point on port bow; that at 6:24 to 6:25 became more hazy; that lookouts were then placed in bow and 3d officer is just descending steps to call captain; that officers on bridge are keeping sharp lookout when suddenly ship is enveloped in dense fog and officers discover ship's upper sails about one point on starboard bow.

240 Can you as a navigator of wide experience in crossing the Atlantic ocean say that you have ever had such an experience, and do you remember any occasion where you were running in hazy weather, engine on "attention" with no fog signals blowing, when suddenly, without any indication of what was coming, you found your ship enveloped in a dense fog?

Mr. Carver objects to the line of inquiry that will follow. Question allowed.

A. Yes.

Q. I suppose it is not usual but occasional? A. 241
Well, very frequently.

Q. Do you recall, personally, yourself, circumstances in which on your ship you had lookouts stationed and yourself on the bridge and your officers and saw no sign of fog when you were suddenly plunged into it? A. Yes, and I have seen perfectly clear weather and without any indication at all and in less than five minutes I have been in the fog, in at one side and out at the other.

242

By Mr. Carver:

Q. How fast does your vessel usually go in clear weather without any sea? A. In clear weather, everything in her favor, 20 knots.

By Mr. Shipman:

Q. Assume that the sun was ahead at about half-past six in the morning, visible so that the officers were proceeding to take an observation. Would that position of the sun in the eyes of those on deck make it more difficult to discover anything ahead? A. Yes, 243
sir, excepting under the immediate rays of the sun. Under the immediate rays of the sun you would be able to see further than you would a point on either side of it.

JOHN WILLIAM SHACKFORD, being duly sworn and examined as a witness for the claimant, testified: 244

It is admitted that Captain Shackford is an expert.

By Mr. Shipman:

Q. You may state, generally, how long you have been to sea in steamships? A. About 36 years.

Q. How many years have you been between New York and Liverpool? A. 16 years.

Q. You are now superintendent of a large steamship line in this city? A. Yes, sir.

245 Q. Of course you have been to sea in all kinds of weather? A. Yes, sir.

Q. Studied the vicissitudes and changes? A. Yes, sir.

Q. Have you ever or have you occasionally had this phenomenon: that when you were sailing in fairly clear weather your ship suddenly plunged into a fog bank without your discovering it in advance when you had your lookouts on duty and engine on "attention?" A. I have had that experience from hazy weather into
246 a thick fog in a few seconds, say in half a minute.

Q. Without having discovered the fog? A. Without having discovered any thicker weather than we were running in.

Q. Though you were looking for it? A. Though we were looking for it.

Q. Suppose, it being from six to half-past six in the morning on the 22nd of June, the sun was up, and though broken clouds dimmed the sun, it came through so that you were about to take an observation; would
247 the position of the sun in your eyes affect your capacity to observe the fog bank if there was one ahead of you? A. In my experience I think you might run into a dense fog without detecting it when the sun was ahead of you much quicker than when it was behind you, although the sun would eat up the fog directly in its rays.

By Mr. Carver:

Q. You are the port captain of the Inman line? A. I am.

248 Q. How fast does the steamer *Paris* of your line run? A. About twenty knots.

249

ALBERT POTJER, being duly sworn and examined as a witness for the claimant, testified :

It is admitted that Captain Potjer is an expert.

By Mr. Shipman :

Q. How long have you been on steamships between your port and New York ? A. Fourteen years.

Q. How long have you been captain of a steamship running on that line ? A. Six years.

250

Q. You are now captain of the *Maasdam ?* A. Yes, sir.

Q. You are about to sail for home ? A. Yes, sir.

Q. I want to ask you with reference to the sudden appearance of fog at sea, whether it does or does not sometimes happen that your ship when sailing in slightly hazy or clear weather, whether suddenly, without your being able to discover it, when you are looking carefully for it, you plunge into a fog ? A. It happens occasionally.

251

Q. It has to you occasionally ? A. Yes, I have seen it at times.

Q. At a time when you were on the lookout ? A. Yes, sir.

Q. And discovered nothing until you plunged into a bank ? A. Yes; just all at once, inside of half a minute.

It is admitted that the reasons why the captain of the *Trave* did not permit the members of the crew to come to the captain's stateroom 252 where he was confined were entirely sufficient reasons, and also that no charge of negligence is made against the ship for not producing lookout Moll.

Libellants rest with the exception of the examination of one witness after recess.

Mr. Choate offers in evidence depositions on the part of the steamer of William Reimkasden, captain ; William C. E. Meisser, first officer ;

253 Heinrich Kempner, third officer; August Berckelmann, second engineer; Johannes von Reigen, fourth engineer; Albert Ruhlow, one of the lookouts; August Carl H. Treptow, one of the lookouts; Heinrich Pohl, quartermaster on the bridge; Gottlieb Buhtz, sailmaker; Johan Wiese, carpenter.

MR. CHOATE: We were asked in the course of the examination of these witnesses to give details in regard to the size and tonnage of the *Trave*,
254 and also with regard to our cargo and the number of passengers.

This information is produced and offered in evidence and marked "Claimant's Exhibit A," which shows the *Trave* to have carried 456 passengers and 180 crew, making, all told, 638 persons. Her cargo was a miscellaneous cargo as stated, and attached to "Claimant's Exhibit A" is a paper showing the valuation to be $1,086,000, of which merchandise $68,000; gold and silver,
255 $1,017,000.

256

U. S. CIRCUIT COURT, 257

SOUTHERN DISTRICT OF NEW YORK.

WILLIAM LAW and others, owners of Ship "FRED B. TAYLOR," &c.,
Libellants,

AGAINST

The Steamship "TRAVE," her engines, &c.,
Claimant. 258

APPEARANCES:

MR. E. P. CARVER and MR. H. PUTNAM, for libellants.

MESSRS. SHIPMAN, LAROCQUE and CHOATE for claimant. 259

NEW YORK, August 22nd, 1892.

JUDGE SHIPMAN: We expect to put in our answer; that we were guilty of no fault; that we observed the rules of navigation; that our ship was in perfect condition in all respects; that the orders given to the engineer were obeyed, and that we made the only change in the course of our ship that could, by any possibility, avoid the collision, if it could be avoided at all; that the faults of the *Taylor* were that she did not give any adequate signals to show her position as she came up in a fog bank; that the water outside of that fog bank, in which the *Taylor* was enveloped, was, though slightly hazy, comparatively clear, and that the *Taylor* did not keep her course, but changed it and fell off to the starboard. This is obvious from the fact that we struck her at an angle of about eighty 260

261 degrees, which we could not have done if she had continued her course. That the *Trave* did not run into the fog till just before she struck the *Taylor;* that immediately after she did discover the masts and sails of the *Taylor*, not her hull, and as she came up in the fog everything was done on board the *Trave* that could be done to avert a collision.

Claimant's answer to be filed on or before September 10th, 1892.

262 Same stipulation as made in this case July 29th, 1892.

WILLIAM REIMKASTEN, sworn and examined, testified as follows:

By Judge Shipman:

Q. What is your age? A. Forty-six.

263 Q. Do you remember a collision that took place between the *Trave* and the ship *Fred B. Taylor*, on the 22d of June last? A. Yes, sir.

Q. Were you on the *Trave* at that time? A. Yes, sir.

Q. What was your position? A. I was captain on board the *Trave*.

Q. How long have you been captain on the *Trave*? A. That voyage was my sixth vovage on the *Trave*.

Q. Had you been captain on steamships prior to that? A. Yes, sir.

264 Q. How long have you been at sea on steamships as captain? A. I have been captain for about six years. I became captain in June, 1886.

Q. What were you before? A. First officer, second, third and fourth; and have been in the North German Lloyd Company since 1873.

Q. What was the condition of your ship? A. In perfect and good order.

Q. So far as you know, was the communication from the bridge to the engineroom perfect? A. In perfect and good order.

Q. And were the orders from the bridge to the 265
engineroom promptly obeyed? A. Yes; always.

Q. On the morning of the 22d of June the collision occurred? A. Yes.

Q. Was it your watch on deck at the time of the collision? No; I was not on deck.

Q. When was the watch changed? A. Four o'clock in the morning.

Q. When did you go below? A. I went below a little before eleven in the evening before.

Q. Whom did you leave on the bridge? A. The first 266
and the third officers were then on watch.

Q. When you went below at eleven? A. Yes.

Q. How long does your watch continue? A. The first officer was on duty till twelve o'clock, and from twelve to four the second officer came, and at four o'clock the first officer took the watch.

Q. What was the weather when you went below? A. It was bright and clear. I could see very far.

Q. Did you have any communication with the bridge from the time you went below until the col- 267
lision? A. No; none whatever.

Q. What was the first thing that you knew of the collision? A. I was laying in my bed and heard the noise of the breaking of spars and wreck of the *Fred B. Taylor* and then I jumped out of my bed.

Q. What did you see? A. I saw the mainmast floating by on the port side and then I jumped on the bridge and took command.

Q. And did what you could to save the passengers? A. Yes, and crew. 268

Cross-Examination:

Q. What time did you leave Sandy Hook? A. We passed Sandy Hook lightship about three o'clock.

Q. And you say the first you knew of the collision was when the wreckage was alongside your vessel? The first you saw with regard to the *Fred. B. Taylor* was the wreckage alongside your steamer? A. Yes, sir.

Q. Could you see the vessel at that time? A. It

261 degrees, which we could not have done if she had continued her course. That the *Trave* did not run into the fog till just before she struck the *Taylor;* that immediately after she did discover the masts and sails of the *Taylor*, not her hull, and as she came up in the fog everything was done on board the *Trave* that could be done to avert a collision.

Claimant's answer to be filed on or before September 10th, 1892.

262 Same stipulation as made in this case July 29th, 1892.

WILLIAM REIMKASTEN, sworn and examined, testified as follows:

By Judge Shipman:

Q. What is your age? A. Forty-six.

263 Q. Do you remember a collision that took place between the *Trave* and the ship *Fred B. Taylor*, on the 22d of June last? A. Yes, sir.

Q. Were you on the *Trave* at that time? A. Yes, sir.

Q. What was your position? A. I was captain on board the *Trave.*

Q. How long have you been captain on the *Trave?* A. That voyage was my sixth vovage on the *Trave.*

Q. Had you been captain on steamships prior to that? A. Yes, sir.

264 Q. How long have you been at sea on steamships as captain? A. I have been captain for about six years. I became captain in June, 1886.

Q. What were you before? A. First officer, second, third and fourth; and have been in the North German Lloyd Company since 1873.

Q. What was the condition of your ship? A. In perfect and good order.

Q. So far as you know, was the communication from the bridge to the engineroom perfect? A. In perfect and good order.

Q. And were the orders from the bridge to the 265
engineroom promptly obeyed? A. Yes; always.

Q. On the morning of the 22d of June the collision occurred? A. Yes.

Q. Was it your watch on deck at the time of the collision? No; I was not on deck.

Q. When was the watch changed? A. Four o'clock in the morning.

Q. When did you go below? A. I went below a little before eleven in the evening before.

Q. Whom did you leave on the bridge? A. The first 266
and the third officers were then on watch.

Q. When you went below at eleven? A. Yes.

Q. How long does your watch continue? A. The first officer was on duty till twelve o'clock, and from twelve to four the second officer came, and at four o'clock the first officer took the watch.

Q. What was the weather when you went below? A. It was bright and clear. I could see very far.

Q. Did you have any communication with the bridge from the time you went below until the col- 267
lision? A. No; none whatever.

Q. What was the first thing that you knew of the collision? A. I was laying in my bed and heard the noise of the breaking of spars and wreck of the *Fred B. Taylor* and then I jumped out of my bed.

Q. What did you see? A. I saw the mainmast floating by on the port side and then I jumped on the bridge and took command.

Q. And did what you could to save the passengers? A. Yes, and crew. 268

Cross-Examination:

Q. What time did you leave Sandy Hook? A. We passed Sandy Hook lightship about three o'clock.

Q. And you say the first you knew of the collision was when the wreckage was alongside your vessel? The first you saw with regard to the *Fred. B. Taylor* was the wreckage alongside your steamer? A. Yes, sir.

Q. Could you see the vessel at that time? A. It

269 was close by; perhaps only twenty feet off from my ship's side, and probably not that.

Q. How was the weather, thick? A. Then it was thick.

Q. And you had not been up on deck from eleven o'clock until that time? A. No.

Q. And did you hear any whistle blown on board your vessel before the collision took place? A. No; there was none blowed.

Q. How far do you think that your vessel went
270 after she went through the *Fred B. Taylor* before your ship stopped? A. That is hard to say; it is difficult to say; it might be a mile; we might have gone a mile. I couldn't see anything as the ship was covered right up in the fog and I had nothing to judge by.

Q. How far was it from Sandy Hook to where the collision occurred? A. We made it out from dead reckoning to be two hundred and forty-three miles, or very near to it.

271 Q. Now, after the collision took place you came back to the wreckage and lowered your boats and saved the men? A. Yes, sir.

Q. How long were you detained by the collision? A. Well, the collision took place at 6.32, and we got the men on board from the *Fred B. Taylor* at about eight o'clock. And then, as it was a rough sea, I had to swing round my ship, because I lowered two boats, one from each side, and for that purpose I went through the two pieces of wreckage of the *Fred B.*
272 *Taylor*, and I was detained by that, and when we were clear from everything and after I examined my own damage I went over the side on a rope——

Q. I want to know when it was—how long you were detained by all of these things before you proceeded on your voyage to Southampton? A. Say till half past nine or ten o'clock. You can find that in the log book.

Q. Now, how was the weather—were you on deck all the rest of that day? A. Yes, I was up till after midnight; it was a dense fog.

Q. How was the weather the rest of that day? A. 273
From noon we had a dense fog and after the collision took place till about ten o'clock we had it clear, and ten minutes after ten I took an observation myself from the sun and it was quite a fine and nice horizon, and at twelve o'clock noon it became foggy again and that fog kept on again until midnight for twelve hours.

Q. How many miles did you make from the time you left Sandy Hook until noon the next day; that is, the day of the collision? A. After the collision?

Q. I mean on the 22d? A. The log is there, I 274
don't know exactly the miles.

Q. How was the weather the next twenty-four hours? A. As I say, we had a dense fog up to midnight and after that it cleared.

Q. How many miles did you make the next twenty-four hours? A. Two hundred and eighty on the 22d at noon, and to the time the collision took place it was two hundred and forty-three miles.

Q. Did you hear any bells rung on board your ves- 275
sel before the collision took place? A. No.

Q. Were you awake before the collision took place? A. No.

Q. Then some noise awoke you? A. Yes, the breaking of the spars of the *Fred B. Taylor*, and the sides.

JUDGE SHIPMAN: I do not claim that they blew any whistles, or rung any bells immediately prior to the collision.

Q. What distance did you make from the 22d at 276
noon until the 23d at noon? A. What run?

Q. Yes. A. (after looking at log) 329.

Q. What speed was your vessel running when you came on deck? A. When I came on deck—well, I put down by my opinion eight miles.

Q. Eight miles an hour? A. Eight knots; that was when the wreck of the ship was floating by.

Q. Did you see any change of course on the *Trave* after you came on deck? A. No; after the collision was done you can't say very much whether a ship is a

277 point out of the way or not, as it was no interest at all.

Q. When you say that it was at about 6.30 you mean mean time, don't you? A. 6.32 was the collision. We also keep true time from the next noon.

Q. When do you change your clocks on board of the *Trave;* when you are going either to the westward or eastward; do you change them more than once a day? A. We change them once going to the eastward—no, we change—let me see—we change them
278 twice going to the westward and once going to the eastward.

Q. What time do you make those changes? A. Going to the westward we change the clock at one o'clock and six o'clock in the morning, and going to the eastward we change the clock at four o'clock in the morning, giving it a whole turn ahead.

Q. And you usually make in twenty-four hours about how many minutes? A. Well, of course, it depends more or less—between thirty-five and forty
279 minutes.

Q. What day was it you arrived at Southampton? A. It was eight days afterwards, on Thursday morning, the 30th of June. We passed the Needles 3.55 in the morning.

Q. How many days did that make it from New York? A. Eight days, seven hours and forty-five minutes.

Q. How many days after you struck the *Taylor* did you have the fog again? A. Only twelve hours after
280 the collision up to next midnight; it was clear afterwards, always.

Signature and reading of notes waived.

281

WILLIAM C. D. MEISSEL, sworn and examined, testifies as follows:

By Judge Shipman:

Q. What position do you hold now, first officer of the *Trave?* A. First officer, yes.

Q. How long have you been on the *Trave* as first officer? A. Two years on the *Trave.*

Q. What is your age? A. 33 years.

Q. A native of Germany? A. Yes, sir. 822

Q. How long have you been to sea? A. Since 1875.

Q. You have been first officer of the *Trave,* how long? A. Two years.

Q. What was your position before that? A. Fourth, third, second and chief officer.

Q. How long have you been in the employ of the North German Lloyd? A. Ten years.

Q. All the time on the steamships? A. Yes, sir.

Q. Do you remember the collision which occurred on the 22d of June? A. Yes, sir. 283

Q. On your outward-bound trip from New York to Bremen? A. Yes, sir.

Q. What time did you leave Sandy Hook on that trip? A. About three o'clock on the afternoon of Tuesday, the 21st of June; I don't know exactly.

Q. Well, what course did you run? A. The course on our track ordered by the company.

Q. Give the compass course? A. At first, about east half south true course, about that. The true course reckoned at both deviation and variation. 284

Q. What was the condition of the weather? A. It was fine weather.

Q. From the time you left Sandy Hook? A. Fine weather at first, then smooth sea, and afterwards we experienced a little bit more wind—a southwest swell and west, southwest sea.

Q. Now, you were on the bridge at the time of the collision? A. Yes, sir.

Q. When did you go on? A. At four o'clock in the morning.

285 Q. On the 22d of June? A. Yes, sir.

Q. You had been on during the night before that? A. Yes, sir.

Q. When did you go off? A. At twelve o'clock at night.

Q. And continued off until four? A. Yes, sir.

Q. What was the state of the weather as regards fog or clearness, when you went off at twelve o'clock? A. Very nice and clear weather.

Q. When you came on at four o'clock, what was the
286 state of the weather? A. It was nice weather and a fresh breeze from the west, southwest.

Q. How about its being clear? A. Clear.

Q. How long did it continue clear after you came on at four o'clock? A. Till ten minutes past six "bridge time."

Q. Had you passed any vessel prior to ten minutes past six, after you came on deck? A. I can't say that. I guess several, that is, several sailing vessels. I do not remember passing any vessels between four o'clock
287 and ten minutes past six.

Q. At ten minutes past six, what was the state of the weather? A. It commenced to be hazy.

Q. Any fog at that time? A. No.

Q. What time did the collision take place? A. At six thirty on my watch.

Q. Now, between ten minutes past six and six thirty when the collision took place, did you pass any vessels? A. Yes, a steamer.

Q. What steamer did you pass? A. It might be a
288 freight boat, with two masts and one funnel.

Q. How far off? A. About two miles.

Q. Could you see her plainly? A. Yes, sir; the third officer took a glass and saw the steamer with the glass.

Q. You could see her without the glasses? A. Yes, sir.

Q. Now, describe the weather with regard to clearness, or hazy, or fog, as nearly as you can, from ten minutes past six down to the time you discovered the *Taylor*? A. I would like to give that in my language.

(By Mr. Carver:) 289

Q. In German? A. Yes, sir.

(At suggestion of counsel witness proceeded with his answer in English.)

A. At 6.20 I passed that steamer and I saw a steamer on the port side about two miles away, and the steamer gave no fog signals at all, that I heard; it was hazy, but I didn't think that we would get fog at all; there was no fog at all and it was not necessary for me to blow the whistle, or anything like that. I 290
ordered at 6.10 the carpenter to close the compartments, and I put the engine telegraph on "attention." At 6.20, after passing the steamer, the third officer asked of me if he can go down to look around in ship; he was on the bridge with me, and he asked if it was allowed for him to go down for a moment to look around in the ship. I didn't know what it was for, and I stopped him on the bridge, because I thought the sun was right ahead, and I stopped him on the bridge; because I thought I could get—I mean if the 291
haze goes away, it was possible for me to take an observation from the sun, and that was the reason I stopped the officer on the bridge, because I wanted to send him down to the chronometer, because I would like to take an observation. He was to put the chronometer time down, if I took an angle of the sun and after five minutes later, about five or six minutes before the collision it was quite clear, clear as it was before when the third officer asked me if he could go down; but six minutes before the collision the 292
haze commenced again and I ordered the lookout mens from the crow's nest to the bow and the lookout mens stood out there about two minutes, forward in the bow, and the sun was about a point, or half a point, on the port side and we all saw the sun plain and we must have run from warm water into cold water, and the sailing vessel must be right inside the fog bank. Nobody can say it was foggy, but it was hazy, and I thought I could see far enough and I sent the officer down to the captain to let him know that the engine

293 telegraph stood on "attention," and it commenced to get hazier, and at that time the third officer was coming down on the bridge steps. I stood in the middle of the bridge near the compass and looked sharp ahead and then in the next moment the ship entered the fog bank, and then I got directly the foresails of the vessel and did not see the hull or yards, but only the foresails, and that was the reason I thought I just entered the fog bank and saw the sailing vessel one point on the starboard, and I put the helm hard-a-port and put
294 the engine full speed astern at the same time to come out with my ship, to work my ship to starboard and clear the stern of the sailing vessel. I did not take an observation before the collision and that there were two lookouts in the bow, who went there from the crow's nest by my direction.

Q. Now, what next happened? A. Well, I saw that the sailing vessel which I saw on the starboard side one point works over the ship with his port helm and, keeping her off, and I went through the ship on an angle
295 of about 80 degrees. I ran right square through the ship.

Q. Where did you strike her? A. About square.

Q. About where did you strike her? A. I passed the fore and mainmast and went through the ship about ten feet before the mizzenmast.

Q. And cut her in two? A. Yes, sir.

Q. Do you know whether the *Taylor* changed her course after you discovered her and before you struck her? A. I don't know it perfectly well, but I believe
296 he does it and he must have done it, because if the captain of the *Taylor* kept his ship on the northwest course it was impossible for us to strike her on an angle of 80°.

Q. How fast were you running before you discovered the fog? A. Fifteen and a half miles, about.

Q. Was the direction to the engineer to reverse the engine full speed aback obeyed? A. After seven seconds the engine makes a full revolution.

Q. How fast were you running at the time you struck her? A. About eight or nine miles.

Q. After you went through her and cut her in two, what did you do? A. I ordered to make the boats ready and afterwards the captain came up on the bridge and takes command. 297

Q. Well, the boats were put out and every effort made to save the crew of the *Taylor*? A. Yes, sir; we lowered two boats, and the first boat was in the water before the headway was out of the ship again.

It is admitted on all hands that everything was done on board the *Trave* that could be done to save the crew of the ship after the collision. 298

Q. Do you know how much your ship fell off after you put the helm down and had discovered the *Taylor*, before you struck her; how many points? A. One point and a half; one point and a quarter by the compass and gave her a quarter point for swinging a point and a half; it may be a little more.

CROSS-EXAMINATION:

299

Q. How was the *Trave* heading by your compass on the bridge at the time the collision took place? A. You will find it in the books, east a quarter south.

Q. Did you see it yourself? A. Yes, sir; that is the course was steered.

Q. I mean, taking the compass, how did it head by your compass on the bridge? A. As we went through the ship—

Q. As you struck the ship? A. East southeast, half east.

300

Q. And your variation is about how many degrees? A. The variation is about ten degrees, or a point—eleven degrees.

Q. How was your deviation of the compass? A. Three degrees.

Q. Did you notice how your vessel was heading by the compass before you entered the fog bank? A. East a quarter south.

Q. And what was the course you gave the man at the wheel? A. East a quarter south.

301 Q. You say that you sent the carpenter down at about 6.10 to close the compartments? A. Yes, sir.

Q. Did you close the compartments before since you had left Sandy Hook? A. No, sir.

Q. Why did you order the compartments closed at that time? A. We always close the compartments if the horizon is not plain to see and we always close the compartments in the English and North Sea.

Q. In other words, when you feel that there is any danger of a collision, or when you feel there is any li-
302 ability of the ship going ashore you close the compartments at once, is that correct? A. I don't understand it right.

Q. (Repeated.) A. Well, we closed—yes, certainly.

Q. Why did you order the compartments closed at this time? A. We always close the compartments, if the horizon is not plain to see.

Q. In other words, if you think there is any danger you close the compartments? A. If I cannot see the horizon plain it is the order of the company to close
303 the compartments.

Q. Did you see the sun rise that morning? A. Yes, sir; I took an observation for the azimuth.

Q. At 6.20 you think you were going at fifteen and a half knots? A. Yes, sir.

Q. How far do you think you could see a vessel or an object at 6.20? A. Well, about two miles, I should say.

Q. Could you see as well along the surface of the water as you could above? A. I don't know. I was
304 standing 30 feet over the surface of the water.

Q. How far was your bridge above the surface of the water at that time? A. 30 feet above the water.

Q. What time was it that you ordered the lookouts to go forward? A. Five to six minutes before the collision.

Q. And the reason why you ordered lookouts to go forward, at that time, was that you could not see as plainly as you could before, was it not? A. We generally putthe lookout in hazy weather ahead at the bow.

Q. In other times you put them in the crow's nest?

A. Yes, sir; we generally have one man at the crow's 305
nest.

Q. You gave no order to the engineer to slow the ship at all, until you saw the sails of the *Fred B. Taylor*, did you?

A. If I put the engine telegraph on "attention," it is the order to slow the ship down.

Q. At what time did you put the engine on "attention"? A. 6.10.

Q. How much did you slow down when you put the engine on "attention"? A. The ship runs more than 306
fifteen and a half knots. Before 6.10 she was going full speed.

Q. In other words, before 6:10 she ran full speed, and after 6.10 she slowed down to fifteen and a half knots? A. Yes, sir.

Q. Where were you standing at 6.20; what part of the bridge? A. I was walking round.

Q. Were you looking ahead at all? A. Certainly.

Q. At 6.20 you say the third officer asked to step off the bridge? A. Yes, sir. 307

Q. And did you have any conversation with him at that time? A. I do not talk with the officer on the bridge if I am on duty. I give him my orders, and I stand on one side and he on the other.

Q. You say you intended to take an observation of the sun at that time? A. Yes, sir.

Q. At 6.20? A. Yes, sir.

Q. Where was the instrument with which you were to take the observation? A. On the bridge.

Q. Did you take that instrument up at all and try to 308
take an observation of the sun? A. The instrument was on the bridge, but I did not take it out of the box.

Q. Do you remember which direction the steamer that you passed was going? A. Right against her.

Q. What was the color of the funnel of that steamer? A. I don't know.

Q. Could you distinguish the color of the funnel at that distance? A. No.

Q. Could you distinguish her rig? A. I only saw two masts and one funnel.

309 Q. Did she have the sails set? A. No, sir.

Q. How was the wind at that time? A. Right against that steamer.

Q. Give us the direction of the wind? A. It was west southwest. We got the sails up, and I took the sails down about six o'clock, I guess.

Q. Then you took the sails down about six o'clock? A. Yes, sir.

Q. Do you remember whether the sails were down or not when you passed the steamer? A. The sails
310 were down when we passed the steamer.

Q. Then at the time when you first saw the hull of the sailing vessel—that is, the *Fred B. Taylor*, your vessel was swinging off under a port helm? A. Yes, sir.

Q. How far should you judge from your vessel was the sailing vessel when you first saw her sails? A. About six hundred feet—one and a half ship's length of our ship, about.

Q. How far should you say the hull was when you
311 saw the hull? A. I did not make any observation of that.

Q. About how far? A. I don't know.

Q. Do you think it was a ship's length? A. I cannot say that.

Q. How far ahead did you see this fog bank, should you judge? A. I didn't see the fog bank at all. I just entered the fog bank, and then I got the sailing vessel in sight at the same moment.

Q. In other words, you did not observe any fog bank
312 forward, did you? A. We saw a bank, a black stripe along, but nothing more, in the haze.

Q. Give us the words that you spoke to the third officer when you told him to go and see the captain? A. (Referring to a paper.)

Q. What is that? A. It is a paper what I write to See-Amt at Bremerhaven. I told him in German gehen sie zun kapitain und sagen sie dass es sehr hazig oder wurde und ich wurde anfang zu pfeiffen. "Go to the captain and say that it is getting hazier and I would commence to whistle."

Q. And this was about five minutes before the collision that you sent the third mate down with that message? A. No, sir; it was about two minutes before the collision, or one and a half minutes before the collision. 313

Q. How long had the lookout been at the bow when you sent the third officer down? A. Well, about three minutes.

Q. How long after the engine had been put "attention"? A. 6.10—20 minutes.

Q. About how many minutes? A. Twenty exactly. 314

Q. Did the lookouts make any report to you? A. I saw the sailing vessel first and afterwards called the lookouts.

Q. (By Mr. Shipman). How soon? A. About five seconds.

Q. You say you saw the sailing vessel first? A. Yes, sir.

Q. How far from you were the lookouts situated? A. About 80 feet.

Q. You saw the sailing vessel's sails before any report was made? A. High up, yes. 315

Q. Could you see from the sails what kind of a sailing vessel it was? A. No, not at first.

Q. Could you see what direction she was heading? A. Yes, directly. She was heading about north northwest, about that.

Q. She was heading somewhere around northwest? A. Yes, sir; laying over from starboard to port.

Q. Was any fog signal reported by your lookouts to you? A. No, sir. 316

Q. Did you hear any fog signal at all? A. Not at all.

Q. Did you hear a fog signal just at the time you collided with the vessel? A. No.

Q. How far should you judge your vessel went after she cut the other vessel in two? A. From the point I got the ship in sight——

Q. How far do you judge your vessel went from the time you struck her, until you were able to bring your vessel to a full stop? A. In about three and one-half minutes.

317 Q. How was your vessel heading when you brought her to a full stop? A. I didn't understand your question before. I thought you mean, if I run full speed ahead and I put the engine telegraph full speed astern and it took three and one-half minutes to stop her.

Q. That is the time, but I ask you how far you went during that time; how many miles? A. Well, about a ship's length. As I went in the ship I go full speed astern before and I go full speed attern about two minutes and as I get the wreck on the engine
318 skylight I stop the engine again, because I didn't want the wreck pieces in my propeller and we went astern again as the wreck passes our propeller.

Q. That is, after the wreck had passed your propeller you went astern again? A. Yes, sir.

Q. But you stopped your propeller while you were going through the ship? A. Yes, sir.

Q. How long do you think it was from the time that you struck the ship until your vessel came to a dead stop in the water? A. About four minutes.

319 Q. How were you heading by compass when your vessel came to a full stop? A. On a south, southeast course. I did not look on the compass afterwards, but the man says "south, southeast" I guess.

Q. How many men were there in the watch on deck on your vessel? A. Two officers on the watch, two quartermasters, one boatswain, one carpenter, seven sailors and three half men.

Q. That is, ordinary seamen? A. Yes, sir.

320 Q. Now, you say, that the carpenter was below? A. The carpenter was below, yes.

Q. Where was the boatswain? A. The boatswain was on the promenade deck.

Q. What part of the ship? A. I don't know, close to the boats, cleaning the white paint on the promenade deck.

Q. Where was the rest of the crew? A. All on deck, close to the bridge.

Q. Were they also cleaning the paint? A. Yes, sir.

Q. How long were you engaged in taking in sail? 321
A. Ten minutes past six about we took the sails down.
Q. How long did it take you to take the sails down?
A. I only let go the falls and let the sail lay.
Q. Did you let go the falls yourself? A. No, sir.
Q. Did you go into the pilothouse yourself, at any time, from 6.10 to the time of collision? A. No, sir.
Q. After the sails were lowered, were the boatswain and the other men engaged in scrubbing paint work and washing decks up to the time of the collision? A. Not washing decks. We cleaned the decks from 322
eight to twelve and twelve to four.
Q. They were engaged in scrubbing paint work? A. Yes, sir.
Q. And were so engaged at the time of the collision? A. Yes, sir.
Q. Now, on which side of the bridge were you when you first saw the sails of this vessel? A. I was in the middle close to the compass.
Q. How did the sails of this vessel bear from you at that time? A. In the direction of one point on the 323
starboard side.
Q. Did you look at the sails through your glass?
A. No, sir; we did not use glasses in hazy weather.
Q. How long were you on deck after the collision?
A. Till I went away with the boat.
Q. How long before you turned in; what time was it you turned in that day? What time was it you went below to sleep that day? A. After the collision?
Q. Yes. A. I don't know.
Q. Was it foggy when you went down? A. After- 324
wards we had some hours fog.
Q. At what speed did your vessel go through the water then after you resumed your course? A. Half speed.
Q. What is half speed; how many knots? A. Well, it is different; about eight to ten miles.
Q. Were you on deck that night? A. Yes, sir.
Q. Was it foggy that night—the night after the collision? A. I can't say that. I can't say that—you will find that in the log.

325 Q. Did you make this log? A. Yes.

Q. This is in your handwriting? A. Yes, sir.

Q. When did you make it up; when did you write it on this log book? A. I wrote it right after I was on the bridge, or just as soon as I could after I left the bridge.

Q. Can you remember when you wrote page 34 of the log? A. I wrote that the next day after the collision.

Q. When did you write it on this book? A. The
326 next day, or the following day after the collision.

Q. From what did you write that log—your memory? A. From the scrap book.

Q. How often did you make entries in the scrap book? A. Every four hours; the third and fourth officers do it.

Q. Either yourself, or the second officer does it every four hours? A. No; it is the third and fourth officers that put it down in the scrap book and the chief and second officers have to look in it to see if it is right and
327 change it if it is not right.

Q. These facts you have in regard to time were all put down on the scrap book by the third officer? A. No, sir; that is what I put down myself.

Q. Do you know whether you put them down yourself or not? A. All these things I put down myself in the scrap book.

Q. When you give us the time you take the time as you state it in the log, do you not? A. Yes, sir.

Q. And you have no memory about it except as you
328 have refreshed your memory from reading the log; is that correct about the time? A. Well, we have a book on the bridge and if we give any order instead of the speed of the ship or changing the courses, then we put that down directly on the bridge by our watch, and as I give the order for the bridge telegraph, I put the order down on my book and I put down the time from my watch.

Q. What was the time by your watch when the collision took place? A. A little bit over 6.30.

Q. How did your watch compare with the clock in 329
the pilothouse? A. Exactly the same.

Q. Were you examined before the See-Amt in Bremerhaven? A. Yes.

Q. And that testimony was all taken down? A. Yes, sir.

Q. And the testimony that you gave at that time was the truth, was it not; you testified to the truth at that time? A. Certainly.

Q. Did the captain leave any orders to you, when he left that night, to call him if the weather was thick? 330
A. Yes, sir.

Q. And it was because the weather was thick that you sent the third officer down to call him? A. Yes, sir.

Q. Then at the time you sent the third officer down the weather was getting pretty thick, wasn't it? A. As the third officer went down I just entered the fog bank.

Q. Did you blow any whistle at the time you entered the fog bank? A. Not before. 331

Q. Did you blow any whistle before the collision? A. No, sir; we had no time for that.

Q. How far distant did you see this fog bank? A. I did not see any fog bank at all before I went in. There was a bank standing to the eastward, a black stripe all round.

Q. But you could not see the horizon at that time? A. No.

Q. The weather was, at that time, so hazy that you could not see the horizon? A. No; we could not see 332
the horizon.

Q. And you thought that when you saw that black bank that it was a fog bank, didn't you? A. No; I told you before that I did not make it out whether it was a fog bank or not. I only saw the fog just as I went in the fog.

Q. Then all you knew in regard to the weather from the observation you made, was that the weather was hazy at that time and you saw a black streak which prevented you from seeing the horizon; is that right?

333 A. Yes, sir; you could not see the horizon at all at that time.

Q. What time was it that you first ceased to see the horizon after the sun rose that morning? A. You saw the horizon quite plain until 6.10.

Q. And after that time you could not see the horizon at all? A. About 6.20 I thought I saw the horizon, but it was not the horizon.

Q. But it was a black streak which appeared like the water? A. Yes, sir.

334 Q. Providing your vessel was going five knots per hour, how long would it take to stop her if you gave the order "Full speed astern"? A. If a vessel goes five knots, it is impossible to steer your vessel at all.

Q. What is the slowest you ever saw your vessel go? A. About 7 or 8 miles.

Q. How long does it take to stop your vessel when you are going 7 or 8 miles per hour, provided you give the order for full speed astern? A. Well, two minutes; about that.

335 Q. Do you ever in mid-ocean stop your vessel in fog? A. Several times.

Q. Did you ever stop your vessel in a fog and listen for fog signals? A. We always do. If we hear anything we stop.

Q. You can't hear fog signals on your vessel from dead ahead when the wind is fair, provided you are going full speed, can you, except the fog signal of the steamer? A. Well, you can hear. I have heard myself very often a fog signal on one side, or on the

336 other side from a sailing vessel, too.

Q. Did you ever hear it dead ahead? A. Yes, sir.

Q. When the wind is fair on your vessel? A. If a strong breeze, not. If it is a very strong breeze it is impossible to hear anything.

Q. As the breeze was blowing at that time? A. Well, it was a good wind; our smoke goes ahead.

Q. What kind of coal do you burn? A. We use American coal.

Q. Does it give a black smoke? A. Yes, sir.

Q. And at that time the smoke was dead astern—

dead aft? A. About two points in front of the star- 337
board quarter.

Q. And that caused your smoke to blow a little over the port bow? A. Yes; two points out from port.

Q. And were you using considerable coal at that time? A. We were using American coal.

Q. How far is the smokestack from the bridge? Have you two? A. Yes, sir; about fifty feet.

Q. Forward or aft the bridge? A. Aft.

Q. Then the smoke was blowing right over the 338
bridge? A. No, sir, not at all. The smoke runs out two points on the port side, and the sailing vessel was on the starboard. It would not cover the sailing vessel.

Q. Did you try to see whether there was any vessel on the port side? Did you look on the port side for any vessel? A. What time?

Q. Why from 6.20 to the time of the collision? A. No, sir.

Q. You rely, with regard to the reports of vessels 339
or fog signals ahead on either bow, largely on the lookout, which is in the bow? A. Yes, sir. I don't understand that question right.

Q. (Repeated.) A. The lookout calls out "A ship," if the ship is seen. The lookout is posted there by law. We look out for ourselves.

Q. In other words, I understand you rely principally upon your own hearing and sight rather than on the lookout. Is that correct? A. Certainly.

Q. You put the lookout there simply because he is 340
required by the law? A. Yes, sir.

A. And the lookout reports simply what he sees? A. Yes, sir.

Q. And nothing more? A. No.

RE-DIRECT:

Q. From 6.10 to the time of the collision were you looking out yourself all the while? A. Yes, sir.

Q. Walking back and forth on the bridge? A. Yes, sir.

341 Q. You may have stated it already, but I want to get it again: from the time you first discovered the sails of the *Taylor* to the moment you struck her, how long was it, in your judgment? A. About one and a half to two minutes.

JUDGE SHIPMAN: It is stipulated that if we can we will produce a plan of the ship, with her size, her cargo, and the number of passengers and crew on board, all told.

342 The log-book above referred to was marked "Claimant's Exhibit 1 *id.* of this date. G. McK. Sten."

Signature and reading of the notes waived.

HEINRICH KENTER, sworn and examined, testified as follows:

343 By Judge Shipman:

Q. Are you a native of Germany? A. Yes, sir.

Q. What part? A. I was born on the Rhine.

Q. What is your age? A. 31.

Q. How long have you been at sea? A. Since 1876.

Q. How long have you been on steamers? A. About five years.

Q. You were third officer on the *Trave* at the time of this collision? A. Yes, sir.

344 Q. How long have you been third officer on the *Trave?* A. One and three-quarter years.

Q. Before that what were you? A. Third officer.

Q. On what vessel? A. I was fourth officer on the *Werra.*

Q. How long were you on the *Werra?* A. About two years.

Q. Do you remember the day on which this collision occurred? A. Yes, sir.

Q. June 22d? A. Yes, sir.

Q. What time did you go on watch that morning before the collision? A. Four in the morning.

Q. Where were you stationed? A. On the bridge. 345

Q. With the first officer? A. Yes.

Q. What was the state of the weather when you came on duty that morning? A. Nice clear weather.

Q. How long did it continue clear? A. Until six.

Q. Was it clear up to six o'clock? A. Yes, sir.

Q. After that, what took place in regard to the weather? A. A little hazy on the water; very low.

Q. How long did that continue? A. Until the collision.

Q. Now, you were on the bridge during all this time; 346 were you ordered to notify the captain at any time? A. Yes.

Q. About what time was that order given? A. About two minutes before the collision.

Q. What was the state of the weather then? A. The weather was about the same.

Q. Did you before the collision enter a fog bank? A. When the collision was we were in the fog bank. It occurred just at the moment we entered the fog bank. 347

Q. Who first discovered the *Taylor*? A. The chief officer.

Q. He told you? A. Yes.

Q. Did you at the same moment see her? A. No, sir; I was on the steps of the bridge.

Q. Did you see her at all before you struck her? A. Yes.

Q. How long? A. When she was about a ship's length and a half off.

Q. And you struck her immediately after? A. 348 Yes, sir.

Q. Do you remember where you struck her? A. By the mizzen mast; a couple of feet ahead of the mizzen-mast.

Q. Did you hear any fog horn, or other signal from the ship before you struck her? A. No, sir.

Q. Do you remember any order that was given in regard to steering your vessel before you struck her? A. Yes, when I was on the steps I heard the chief

349 officer sing out "Hard-aport," and I heard a bell to the engine.

Q. Do you know what that bell meant? A. Yes, sir, reverse the engine full speed.

Q. How long was that before the *Trave* struck the *Taylor*? A. It was about a ship's length and a half.

By Mr. Carver:

Q. How long in time; how many minutes? A. I can't tell.

350 Q. A very brief space, a short time? A. A short time.

Q. Had the *Trave* fallen off before she struck her? A. Yes, sir.

Q. Do you remember about what angle she struck? A. About 80 degrees.

Q. You were going down to notify the captain just before this order took place? A. Yes, sir.

Q. You were stepping down from the bridge at the time? A. Yes, sir.

351 Q. Where did you go after the order was given? A. I heard the chief officer commanding, and I thought there was something the matter.

Q. Where did you go? A. I went up on the bridge again.

Q. And immediately the ships came together? A. Yes, sir.

Q. Can you tell what time the collision actually took place? A. Six thirty.

By Mr. Carver:

352 Q. How do you know that time? A. I looked at my watch when I was down in the boat to save the crew.

Q. What time was that? A. At 6.33 I was away from the ship.

By Judge Shipman:

Q. You say that you entered the fog bank just as you struck the vessel? A. Yes, sir.

Q. And up to that time the weather had been a little hazy? A. Yes, sir.

CROSS-EXAMINATION: 353

Q. You say just before the collision you were standing on the steps of the bridge? A. Yes, sir.

Q. Going down? A. Yes, sir.

Q. Now, the steps of the bridge midships? A. Yes, sir.

Q On which side was it? A. On the port side.

Q. Did you get the order from the first officer to go and state something to the captain while you were on the bridge, or while you were on the steps of the bridge? A. While I was on the bridge. 354

Q. Where were you on the bridge when the first officer gave you the orders to go down and make a report to the master? A. I was on the port side of the bridge with the glass in my hand.

Q. Where was the first officer standing? A. Amidships.

Q. Did the first officer face you when he gave you the orders? A. Yes, sir.

Q. What did he say? A. He said: "Go down to the captain, I think it will be foggy, and I intend to 355 blow the whistle and slow the engine down."

Q. Did you put that order down in the book? A. A. No, sir.

Q Did anybody put that order down in the book? A. No, sir.

Q. Do you know what time that was when the order was given? A. A little before the collision.

Q. Did you take the time by your watch when the order was given? A. No, sir, we only take the time when we do it. 356

Q. And you at once went down to see the captain? A. Yes, sir.

Q. How far did you go down? A. About three steps.

Q. What did you do then? A. Then I heard the chief officer command the reversing of the engine and I went up again without doing his order.

Q. Did you go up slowly? A. No, I jumped up right away.

357 Q. The quartermaster was in the pilothouse? A. No, he was standing up on the bridge, free.

Q. On the same bridge as you? A. He was standing amidships on the bridge.

Q. How many men did you have at the wheel? A. One; we steer by steam.

Q. Then you went up on the bridge? A. Yes, sir.

Q. And on what part of the bridge were you when the collision took place? A. I was standing alongside the chief officer, by the engine telegraph.

358 Q. Did you have any conversation with the chief officer before the collision took place? A. No, sir.

Q. Did you say anything to him? A. No.

Q. Did you make any report? A. No.

Q. Did you hear any of the lookouts make any report? A. No, sir.

Q. Where were you standing when you saw the *Taylor?* A. Alongside the engine telegraph about amidships of the bridge.

Q. What did you first see, the sails? A. Yes, sir.

359 Q. Then afterwards you saw the hull? A. Yes, sir.

Q. About how far off do you think she was when you saw her hull; about how many of your ship's lengths? A. I think about three-quarters of the ship's length.

Q. What were the words of the first officer when he gave the order while you were on the steps of the bridge? A. He says to the quartermaster, "Hard-to-port your helm."

360 Q. Did he say anything to you? A. No, sir.

Q. Could you from the place you were standing on the steps of the bridge see either of the men at the lookout at that time? A. No.

RE-DIRECT:

Q. Why couldn't you see them? A. I couldn't see the lookout because he was standing in the bow of the ship, and when I was three steps down on the bridge my face was level with the rail of the bridge and I looked above the lookout man.

Q. When you were standing midships on the bridge could you see him? A. Sure; yes. 361

(Signature and reading of notes waived.)

AUGUST BERCKELMANN, sworn and examined, through an interpreter, testifies as follows:

By Judge Shipman:

Q. How old are you? A. 32. 362

Q. Where were you born? A. Hapstedt.

Q. Is that your home now when not on ship? A. No, I am living at Leahe.

Q. How long have you been an engineer on steam ships? A. Eight years.

Q. How long have you been in the employ of the North German Lloyd? A. Ten years.

Q. What portion of that time have you been engineer and in what capacity, what grade? A. Eight years. 363

Q. In what capacity? A. Fourth, third, and second engineer.

Q. Were you on the trip of the *Trave* on which the collision occurred with the ship *Fred Taylor*, on the 22d of last June? A. Yes.

Q. In what capacity? A. As second engineer.

Q. Were you on watch at the time of the collision, in the engineroom? A. Yes.

Q. What time did you go on watch that morning? A. At four in the morning. 364

Q. Who was in the engineroom with you on duty? A. The fourth engineer and two assistants.

Q. What was the duty which the assistants performed? A. Two oilers.

Q. You continued in the engineroom, did you, from the time you went on watch at four o'clock till the collision took place? A. No, not all the time.

Q. Well, how much of the time and what part of the time? A. I was in the boilerroom, and when I got the notice "Attention" I came back to the engineroom.

365 Q. What was the condition of the engine; was it in good order, and did it work promptly? A. Yes, sir.

Q. After six o'clock what order did you get—the first order from the bridge? A. The first order I got was "Full speed back," after six o'clock, machine time.

Q. What order did you get before that? A. "Stand by, attention!"

Q. What time did you get that order? A. 5.59.

Q. What did you do when you got that order to
366 stand by, attention, 5.59? A. I remained at the telegraph, seeing and shut all the compartments that were not used.

Q. How many revolutions was the engine making before you received this order of "attention!" and "stand by"? A. Fifty-nine.

Q. Before the order? A. Fifty-nine revolutions, and 58, and sometimes it was less. At 5.59, when I got the order "attention," I made 59 and 58 revolutions.

367 Q. You were making that before you got the order? A. Yes, at the time.

Q. Now, after you got the order to "stand by, attention," was there any alteration of the speed between that time and when you were ordered full speed astern? A. There was no change.

Q. Now, at what time did you get the order "full speed astern"? A. 6.20, machine time.

Q. What did you do then? A. At once reversed the engine full speed.

368 Q. How long was it before the engine acquired full speed astern? A. Seven to eight seconds.

Q. Now, what time did the collision take place as nearly as you can recollect? A. Between 6.20 and 6.22; I can't say exactly; but about half way between those two points.

Q. Now, do you know from your own personal observation, what the state of the weather was between six o'clock and at the time the collision took place? A. No. I can't anything say about it.

CROSS-EXAMINATION : 369

Q. After the collision took place, you got the order to stop your engine, did you not? A. Yes.

Q. What time was it you got that order? A. About 6.22.

Q. Do you keep a log in the engineroom? A. Yes, a journal.

Q. Will you produce that journal and mark it as an exhibit? A. Yes.

Q. Did you feel the shock of the collision? A. Yes.

Q. How many revolutions had you made astern at 370
the time you felt the shock of the collision? A. I can't tell exactly; about 40 to 45.

Q. Did you at once upon getting the order "full speed astern" reverse the engines? A. At once.

Q. Did you open the throttle valve giving full power? A. Full steam.

The engineer's log book, when produced, to be marked "Claimant's Exhibit 2 id. G. McK., Sten." 371

(Signing and reading of notes waived.)

JOHANNES VON RIEGEN, sworn and examined through an interpreter, testifies as follows :

By Judge Shipman :

Q. What is your age? A. 24.

Q. How long have you been to sea? A. Four and 372
a half years.

Q. How long have you been an engineer? A. Two years and nine months.

Q. On steamships? A. Yes, sir.

Q. How long have you been on the *Trave* as fourth engineer? A. Five months.

Q. Do you remember the collision which took place on the 22d of June last with the *Fred. Taylor*? A. Yes.

Q. Where were you at the time of the collision? A. Standing in the engineroom.

373 Q. Who was there with you? A. The second engineer and the storekeeper.

Q. What time did you go on watch, and go to the engineroom that morning? A. At four in the morning.

Q. Were you in the engineroom from four o'clock in the morning until the collision took place? A. Yes, sir.

Q. Do you remember when the collision took place? A. 6.21, my time.

374 Q. Now, between 5.59 o'clock and 6.21, what order did the engineer get from the bridge; what was the first order? A. 6.20, full speed back.

Q. What order was given prior to that time? A. 5.59, attention.

Q. Were those orders both obeyed promptly? A. Yes, sir.

Q. Was the second engineer during all this time present in the engineroom? A. Yes.

Q. How soon after the order "reverse the engine" 375 and "full speed back" was given before the engine was reversed full speed back? A. It may have been ten seconds.

Q. Was the change ordered instantly made? A. Yes.

Cross-Examination:

Q. What were you doing at 6.20 yourself when the order was given "full speed astern"? A. I opened the steam valve.

376 Q. Did you open the steam valve fully? A. I let in as much steam as could get in.

Q. How many revolutions did the engines make after they commenced working full speed astern after they were reversed? A. Fifty to fifty-five per minute.

Q. What is the pitch of the screw of your steamer? A. I don't know by heart.

Q. What time was it that you got the order to stop the engines? A. 6.22.

Q. What was the next order after that? A. I can't say.

RE-DIRECT: 377

Q. When the order came at 5.59 "attention," what did the engineer do? A. The steam was reduced one atmosphere and we prepared to shut the compartments.

Q. But what number of revolutions did that reduction of steam reduce the motion of the engine; what number of revolutions? A. 5 to 6.

Q. How many revolutions would the engine be making then when it was reduced? A. 59.

378

RE-CROSS:

Q. Who was in charge of the engineroom at that time; you or the second engineer? A. The second engineer.

(Signing and reading of notes waived.)

ALBERT RUHLOW, sworn and examined through an 379
interpreter, testifies as follows:

By Judge Shipman:

Q. Where were you born? A. Althagen, Pommerania.

Q. How old are you? A. 29.

Q. How long have you been at sea? A. Since 1885.

Q. Were you on the *Trave* last 22d of June when she collided with the *Taylor?* A. Yes.

Q. In what capacity? A. As able seaman. 380

Q. What time did you go on watch on the morning of the collision? A. At four in the morning.

Q. Between that time, four o'clock in the morning and the collision, did you go on the lookout? A. I was on the lookout.

Q. What time did you go on the lookout? A. Ten minutes past six.

Q. Where were you stationed first? A. In the crow's nest.

381 Q. Was anyone with you on the lookout at that place? A. Yes.

Q. Who was it? A. Seaman Treptow.

Q. Was Treptow on the lookout before you went there in the crow's nest? A. He was there before.

Q. So you were both together? A. Yes.

Q. How long did you remain in the basket, or crow's nest? A. About ten minutes, it might have been fifteen minutes.

Q. Where were you ordered to then? A. I was or-
382 dered to the ship's bow.

Q. Was Treptow ordered there also? A. Yes.

Q. Did you both go there together? A. Yes, sir.

Q. What kind of weather was it from the time you went into the crow's nest till you were ordered to the bow? A. Good breeze and a little hazy.

Q. What was the state of the weather when you got to the bow of the vessel? A. It was partly clear, and then it became hazy, and then we came into the fog bank.

383 Q. About how long before the collision took place did you go into the fog bank? A. One and a half to two minutes; it might have been longer.

Q. Now, did you or Treptow discover the *Taylor* first? A. I noticed it first.

Q. Did you hail the bridge? A. I reported to Mr. Meissel on the bridge.

Q. What did you report? A. "Ship ahead on starboard side."

Q. How long was that before the collision? A.
384 About one minute; it was not long.

Q. Where was you when the ships struck? A. I was at the bow of the ship and went back after the boats.

Q. When you first discovered the *Taylor*, did you see her hull, or only her sails? A. I saw the sails first.

Q. Did you see the hull at all before you struck her? A. Soon after I made the report I saw the ship's hull and turned back then.

Q. What sails did the *Taylor* have set? A. Full 385
sails set, only the royal sails were made fast.

Q. Then she had her mainsails set? A. Yes; they were all set.

CROSS-EXAMINATION:

Q. When you first saw the sails of the *Taylor*, how many points did they bear on your starboard bow? A. Two points.

Q. Did you hear the foghorn of the *Taylor* at that time? A. I heard the fog signal after I had reported 386
the ship to the bridge.

Q. Did you hear the fog signal before you saw the sails of the *Taylor*? A. No.

Q. How many blasts did you hear when you heard the fog signals of the *Taylor*? A. One.

Q. What did you do when you made the report to the first officer; did you walk towards the bridge? A. I turned round and sang out.

Q. Did you walk towards the bridge at all? A. No; not at that moment; I only left my post when I 387
was ordered to go for the boats.

Q. Did the first officer make any answer to your report? A. He made a sign with his hand.

Q. Did he say anything? A. I didn't hear.

Q. When you left the crow's nest, did any other man take your place there? A. No.

Q. Did you or the man that was with you make any report of the horn that you heard to the first officer? A. I didn't report the horn.

Q. When you made the report to the first officer, 388
what did you say to him? A. "Ship ahead on starboard side."

Q. Did you make any other report besides that report while you were on the lookout? A. No.

Q. Did the other man that was with you make any report? A. No.

Q. On which side of the vessel were you when you saw the sails of the sailing vessel? A. Starboard.

Q. And on which side was the other man? A. On the port side.

389 Q. Did you have any conversation with the other man on the lookout about that time, before you made the report of the sails? A. No.

(Signing and reading of notes waived.)

August Carl Frederick Treptow sworn and examined through an interpreter, testifies as follows:

390 By Judge Shipman:

Q. What is your age? A. 20.

Q. Where were you born? A. Rugenwalve.

Q. How long have you been to sea? A. About five years.

Q. How long have you been on steamships? A. Two and a half years.

Q. Were you on the *Trave* in June last when this collision took place? A. I was on the *Trave* four trips, and this was her fourth trip.

391 Q. What was your grade? A. Able seaman.

Q. Do you remember the collision on the 22d of June with the *Fred. Taylor?* A. Yes.

Q. What time that morning did you go on watch? A. Four o'clock.

Q. What was the weather then? A. Clear, completely clear.

Q. Did you go on the lookout in the crow's nest on that watch? A. Yes.

Q. What time? A. About five minutes past six.

392 Q. Whom did you find in the crow's nest when you went there? A. Wilhelm Hinzer.

Q. Is he on the ship now? A. He is at Havre.

Q. You relieved him? A. Yes.

Q. Did any other lookout go there or afterwards? A. Albert Ruhlow came with me about the same time.

Q. How long did you remain in the crow's nest? A. About 15 minutes.

Q. Were you ordered to any other part of the ship,

and, if so, where? A. We were both ordered to the 393
bow of the ship.

Q. What was the state of the weather when you went into the crow's nest on the lookout as to being hazy or clear? A. Clear.

Q. What was the state of the weather when you were ordered from the crow's nest to the bow of the ship? A. It was a little hazy; could see far enough.

Q. Now, describe the state of the weather from the time you got to the bow of the ship until the collision took place? A. First it was a little hazy and 394
suddenly a fog bank came up.

Q. How long was it from the time that fog bank suddenly came before the ship struck, as nearly as you can fix it? A. About one and a half to two minutes.

Q. Did you see the *Taylor* before the *Trave* struck her? A. Yes.

Q. What did you see; her sails, or hull, or both? A. The sails.

Q. What sails had she set? A. Three or four 395
sails; the topsail and the topgallant sail.

Q. Did you afterwards see her hull before she struck? A. No.

Q. How long do you think it was from the time you first discovered the *Taylor* before you struck her? A. I can't say exactly.

A. About how long? A. About one minute and a half.

CROSS-EXAMINATION: 396

Q. Did you hear the fog horn of the sailing ship before the collision took place? A. I heard it once after they reported the ship.

Q. Did you hear it before the ship was reported? A. No.

By Judge Shipman:

Q. Did you hear any signal from the ship? A. Only the fog horn after I reported the ship.

397 Q. How many blasts of the fog horn did you hear before the collision? A. Only one blast.

Q. How far could you see ahead when you went to the bow of the *Trave*? A. Could see a good end off.

Q. Do you think you could see a mile at that time? A. Can't say exactly.

Q. Do you think you could see two lengths of your ship? Q. Yes, two to three ship lengths.

Q. Was it foggy at the time that you went to the bow? A. Hazy.

398 Q. Could you see the horizon? A. No.

Q. Did you hear any hailing from the *Fred B. Taylor* before you struck her? A. After I had reported the ship to the bridge, I heard one blast, then a call.

Q. Did you see the fog bank ahead when you went on to the lookout in the forward part of the ship? A. Yes.

Q. How long was that before the collision took place? A. I can't say.

399 Q. Did you see the fog bank when you first went there? A. Yes.

RE-DIRECT:

Q. How far off did what you call the fog bank appear to be at the time you went forward? A. I can't say.

Q. About how far? A. I can't say.

RE-CROSS:

400 Q. Did you make any report, or did the man that was with you make any report to the first officer of the fact that there was a fog bank ahead? A. No, I had no chance; as soon as I got into the fog bank the ship was there.

(Signature and reading of notes waived).

401

HEINRICH POHL, sworn and examined through an interpreter, testifies as follows:

By Judge Shipman:

Q. How old are you? A. 31.

Q. How long have you been to sea? A. 17 years.

Q. Were you on the *Trave* on the 22d of June when the collision occurred with the *Fred Taylor*? A. Yes, sir.

Q. How long had you been on the *Trave*? A. Two 402
and one-half years.

Q. In what capacity did you serve on the *Trave* on this trip? A. As quartermaster.

Q. How long had you served as quartermaster? A. Eight years.

Q. What time did you go on watch on the morning of the collision? A. At four o'clock in the morning.

Q. Did you go directly to the bridge to take the wheel? A. Yes, I went to the bridge directly.

Q. Did you continue on the bridge until the time of 403
the collision? A. I went to the bridge directly at four o'clock and was relieved at five o'clock, and went again to the bridge at six.

Q. What was the weather when you went to the bridge at four o'clock? A. Clear, fine.

Q. What was the condition of the weather when you left the bridge at five o'clock? A. The same.

Q. What was the state of the weather when you came back to the bridge at six o'clock? A. Fine, clear weather. 404

Q. Do you remember the course by compass the *Trave* was steering? A. East one-quarter south.

Q. What was the first you heard in regard to the *Taylor*? A. I hadn't heard anything. I had only seen part of the sails in the foremast.

Q. What time did you first see the sails of the *Taylor*? A. About fifteen seconds before I received the order to change the rudder.

Q. What was the order to change? A. Hard to right—hard-a-port.

405 Q. Did you obey the order? A. Yes.

Q. How long was this before the collision? A. About fifteen seconds.

Q. (Repeated). A. Fifteen seconds before the collision.

Q. What was the state of the weather when you discovered the *Taylor*? A. Below was quite thick, foggy.

Q. How long was it from the time you discovered the sails of the *Taylor* till the collision took place? A.
406 According to my opinion fifteen seconds.

Q. Does the *Trave* obey her wheel readily? A. Yes.

Q. How much had she fallen off before she struck? A. One point and a half.

Cross Examination:

Q. Did you hear the horn aboard the *Taylor*? A. No.

Q. Did you hear the report made by the man on
407 the lookout? A. I didn't hear anything.

Q. Did the first officer ring to the engineer at the same time that he gave the order to you "Hard to right." A. Yes, at the same time, and the instrument had reported back.

Q. How long had it been a thick fog when you first saw the sails of the *Taylor*? A. I didn't notice. I only attended to my course.

(Signature and reading of notes waived).

408

409

GOTTLIEB BUHTZ, sworn and examined through an interpreter, testifies as follows:

By Judge Shipman:

Q. How old are you? A. 28.

Q. How long have you been at sea? A. 14 years.

Q. In what capacity? A. First as boy, and then seaman.

Q. What were you on the *Trave?* A. Sailmaker.

Q. How long have you been on the *Trave* as sail- 410
maker? A. A little over a year.

Q. Do you remember the collision that took place on the 22d of June last with the ship *Fred Taylor?* A. Yes, sir.

Q. What time did you go on watch on that morning? A. Four o'clock in the morning.

Q. What were you doing from four o'clock in the morning till the collision took place? A. I cleaned the paint first and then I was ordered to repair the sail.

Q. What were you doing when the collision took 411
place? A. I was sewing the foresail.

Q. Whereabouts? A. I did it on the bow of the ship.

Q. Now, state as nearly as you can recollect, what the condition of the weather was from the time you came on deck until the collision? A. The weather had been clear all the time, and at 6.10 I went to work on the sail; the weather was clear and I was sewing a short time and then the collision happened.

CROSS-EXAMINATION: 412

Q. Were you near the bow of the vessel? A. Yes, right forward in the bow of the ship.

Q. Did you see the *Taylor* before the collision? A. I saw the ship when I heard the calling out.

Q. How far were you from the men that were on the lookout? A. From 15 to 18 feet.

Q. Who was nearest the bow, you or the lookout? A. The lookout was the nearest.

Q. Did you have any conversation with the men on

413 the lookout while you were mending the sail, if so, what was that conversation? A. I didn't speak to them and didn't care about anything except my work.

Q. Did the men at the lookout help you at all on the sail to spread it out? A. No, none.

(Signature and reading of notes waived.)

414 JOHANN WIESE, sworn and examined through an interpreter, testifies as follows:

By Judge Shipman:

Q. What is your age? A. 41.

Q. How long have you been at sea? A. Since 1863.

Q. How long have you been on the *Trave?* A. Six years.

Q. In what capacity? A. Carpenter.

Q. Were you on deck, at the time of this collision, on the *Trave* on the 22d of June last? A. Yes, sir.

415 Q. What time did you go on deck that morning? A. Four o'clock in the morning.

Q. You were then in the first officer's watch? A. Yes, sir.

Q. Where was you from the time you came on at four o'clock down to the collision? A. About six o'clock I got the order to close the compartments, and then I looked after the pump and the water pipes in the passage ways after I had closed the compartments.

Q. That was about six o'clock? A. Yes, sir.

416 Q. Did you obey the order? A. Yes; and I went back to the bridge and reported that the order was fulfilled.

Q. Do you remember what the state of the weather was at six o'clock that morning when you had obeyed this order? A. There was no fog at the time, but I was surprised to receive this order, and I looked around and there was no fog.

Q. Was it hazy? A. The air was a little hazy, but I could see very far.

Q. Now, what was the weather in regard to being

hazy or foggy from that time down to when the collision took place? A. After that time I did not pay any attention to the order. As soon as I reported to the bridge I went below and did some pumping for the kitchen. 417

Q. Where were you when the collision took place? A. I was in passageways and was on my way to my workshop on the port side.

Q. Did you see the *Taylor* at all before the collision? A. I heard some calling out, and then I looked forward and saw the *Trave* going into the sailing ship, and I went right back into the passageways. 418

Cross-Examination:

Q. Was it foggy when you saw the sails of the vessel? A. Yes.

Q. How far do you think you could see a vessel at that time? A. I didn't think of it and didn't see anything. It was only at the moment that I saw the ships come together.

419

(Signature and reading of notes waived.)

George L. Prentice, being duly sworn and examined as a witness for the libellants, testified:

By Mr. Carver:

Q. You are a member of the bar of this county? A. Yes, sir.

Q. And you were a passenger on the *Trave* at the time of the collision with the ship *Fred. B. Taylor*? A. Yes, sir; I was. 420

Q. Could you tell us the number of your stateroom at that time? A. I don't think my room had any number.

Q. In what part of the steamship was it? A. It was the chief cook's room.

Q. How, with reference to the ship, was it located? A. It was on the port hand forward, on the upper deck.

421 Q. Was the room aft or forward of amidships? A. Forward of amidships.

Q. How far should you say it was from the centre of the ship forward? A. I don't know in feet, I couldn't say; it was the furthest room forward on that deck on the port hand. I can locate it by the diagram perfectly well, but don't know how long the *Trave* is.

By the Court:

Q. That was the promenade deck? A. No, sir,
422 there are a number of officers' quarters ranged about a passage. This passage runs outside of the deck house that contains the companion way and so on, and this room was on that passage.

The counsel shows witness large plan of the ship.

The witness indicates the room he occupied.

By Mr. Choate:

Q. Was this on the same deck as the saloon? A. It
423 was on the deck above the saloon.

By the Court:

Q. Is there any other deck over the upper deck? A. Promenade deck. I don't know that there were any rooms except the officers' rooms on the promenade deck.

Q. On this deck here there are nothing but officers' rooms? A. That is all, sir. Those are all bakeshops and cooks' places, etc., all along there.

424 It is agreed that the room referred to is on the deck below the promenade deck, from 195 to 200 feet from the bow of the vessel.

By Mr. Carver:

Q. You were in your berth on the morning of the collision? A. I was, yes.

Q. Did you hear or see anything at the time of the collision; if so, what did you see or hear? A. Do you desire me to describe what occurred in my room at the time, and what I saw from it?

Q. I would like to have you state. A. What I 425
heard and saw was this: I looked out of my window, the side porthole, at about ten minutes to six, I should say, and I noticed it was a very fine morning, very clear, and looked at my watch to determine the time and put the watch back under my pillow again. I was in the upper berth and the berth was athwartships, so that in looking from the berth I could look out of the side porthole.

Q. You looked then right across the ship? A. Right across the ship. There were two portholes in 426
the room, one in front and one at the side. The one in front I had a green curtain drawn across because it was on the same deck with the steerage passengers. After I had put my watch back under pillow and leaned back upon the pillow, I should say it might have been two or three or possibly five minutes, when I raised myself on my elbow again and looked out of this same side porthole again, and then I noticed that it was very thick ahead, and we were running into it. I sank back again on the pillow, and I should say that 427
it was not over three-quarters of a minute before I heard a loud shout on deck, and at the same time heard two blasts of a horn, and I knew we were right on some ship, and I jumped from my berth onto a trunk that was standing in the room and thence to the ground, and called to my wife, who was on the sofa under the side porthole, that we were about to collide, and almost at the same time when I reached the floor of the stateroom, the noise of the collision was heard, and I looked out of the side porthole and saw one-half 428
of the *Taylor* go by.

Q. How was the weather then? A. It was thick as could be then.

Q. Did you look at your watch any time except once? A. Never looked at my watch but once.

Q. That was ten minutes of six? A. About ten minutes of six.

Q. How long do you think it was after that that

429 you saw it was foggy first? A. Five minutes at the outside, I should say.

Q. When you looked out of that porthole you looked directly across the ship. You couldn't look forward, could you? A. Not very much. You know how large a porthole is, and I could only see so far ahead of the beam of the vessel as the distance from my eye to the porthole would let me, that is all.

Q. That would be a very short distance. You couldn't see ahead of the ship at all? A. I couldn't
430 see ahead of the ship.

By the Court:

Q. Was your porthole open or closed? A. Open.

By Mr. Choate:

Q. Port side? A. Port side.

By the Court:

Q. I suppose it was an opening of about eight inches or so, wasn't it? A. No, it was wider than
431 that. I should say that the porthole was at least fifteen inches in diameter, a large porthole. You see it was on the upper deck.

Q. Was that porthole in line with the perpendicular side of the vessel? A. Yes, sir; that was a part of the outside plating of the boat.

Q. Did you regulate your watch every day by the ship's time? A. I did not. This was the first day out and I hadn't had a chance to fix it.

Q. That was New York time? A. New York time.

432

By Mr. Choate:

Q. Your watch was New York time? You hadn't changed it? A. New York time; I hadn't changed it. This was the first day. I didn't change it till twelve o'clock.

Q. You don't recollect hearing a single signal or blast? A. Two blasts.

Q. Did you hear any horn? A. Two blasts of this horn.

By Mr. Carver: 433.

Q. Did you get any clothing on before the collision? A. No, I did not; I was in pajamas.

By the Court:

Q. Did you hear any whistles from your vessel? A. We did not whistle before the collision.

LIBELLANTS REST.

CLAIMANTS REST. 434

TESTIMONY CLOSED.

Summing up adjourned to Febrtiary 11th.

435

436

437

Clt's Exhibit A.

NORDDEUTSCHER LLOYD STEAMSHIP COMPANY,

Oelrichs & Co., Agents,

2 Bowling Green.

NEW YORK, ...188..

Cargo of S. S. *Trave.*

Leaving New York June 21, 1892.

438

125 Tierces.....
275 Half Bbls.. } Lard.
600 Tubs.
51 Bbls. Honey.
27 Tierces Grease.
202 Packages Butter.
250 Cases C'd Goods.
37 Hhds. Tobacco.
75 Cases "

439

550 Bales Cotton.
90 Bales Tobacco.
700 Boxes Cal. Dr. Fruit.
499 Barrels Shoepegs.
3 " Flour.
94 Empty Beer Casks.
29 Boxes Tobacco Samples.
201 Packages Sundries.

PASSENGERS.

440

	Adults.	Children between 1–12 years.	Infants under 1 year.	Servants.
I. Cabin....	145	14	2	3—164
II. "	72	11	—	= 83
Steerage....	186	13	10	=209
Total.....				...456
Crew.....				...180
				636

S. S. *Trave* sailing from New York June 21st, 1892. 441

Custom House value of cargo:

Merchandise	$68,324 00
Gold and silver	1,017,750 00
Total	$1,086,074 00

UNITED STATES DISTRICT COURT, 442

SOUTHERN DISTRICT OF NEW YORK.

WILLIAM LAW *et al.*

vs.

The Steamship "TRAVE."

IN ADMIRALTY.—COLLISION. 443

CARVER & BLODGETT and Mr. PUTNAM for libelants.
SHIPMAN, LAROCQUE & CHOATE for claimants.

BROWN, J.:

The above libel was filed by the owners of the British ship *Fred B. Taylor*, to recover their damages arising from collision with the North German Lloyd steamship *Trave*, in a dense fog some 240 miles to the eastward of Sandy Hook, at about half-past six in the morning, 444 steamer's time, June 22, 1892, whereby the ship was cut in two and sunk.

The steamer was outward bound, and on her usual course, going about due east. The ship was bound from Havre to New York. The wind was moderate from the west, southwest, and the ship was sailing upon her port tack, heading about northwest. She had been sailing for several days in fog, so as to be unable to take observations. The steamer, until about five minutes before collision, had clear weather, and was

445 going at about full speed. A few minutes before the collision the sky began to grow hazy; fog was evidently apprehended; two of the lookouts were called down from the crow's nest and stationed at the bow, as required in thick weather. Orders were given to close the compartments and to the engineer to stand by, and a reduction of half a dozen revolutions of the engine was made, bringing the speed of the *Trave* to about 15 knots. The sun, from an hour and a half to two hours high, was still visible. The fog suddenly became
446 dense. Within two or three minutes afterwards the loom of the ship's sails was seen by the starboard lookout a couple of points on the starboard bow, and he immediately reported to the officer on the bridge, who answered the lookout's report with a waive of the hand, and a little afterwards the ship's horn was heard. The steamer's engines were reversed as soon as possible and her helm was put hard-aport, but without avail. Her stem struck the port side of the ship at an angle of about 80 degrees between the main and
447 mizzen chains, cut her in two and passed between the two parts of the wreck and disappeared in the fog. Some of the ship's crew were drowned; but most, including the master, were recovered from the wreck.

1. I find it impossible, under decisions binding on this Court, to acquit the steamer of the charge of legal fault in running at nearly full speed in thick fog. No doubt the coming on of the fog was very sudden, but it was not so sudden but that her speed could have
448 become "moderate," had her officers chosen to give prompt orders to reduce it to the moderate rate allowed by the regulations. The steamer, doubtless, had no notice of the ship's near presence, as she was invisible in the dense fog ahead, and no sound of the ship's horn was heard until after her sails were seen. The chances that she would meet a vessel so speedily near the very edge of the fog were, no doubt, small; but in not bringing her speed down at once on entering the fog the steamer took all the risk and the attendant responsibility. A similar question was presented in this Court

in the case of The *City of Alexandria*, 31 Fed. Rep. 449
427, 431, in which it was held that the steamer running into a fog bank was bound, at her own risk, to have moderate speed as soon as she got into the fog and to regulate her approach to a fog bank accordingly. Had this steamer slowed as soon as she got into the thick fog there is no doubt that she would have cleared the ship, as she lacked only 100 feet of doing so as it was. The question of what constitutes a moderate speed in a fog has been so often considered and adjudicated by the Supreme Court that further discussion on that point 450
here would be inappropriate. *The Nacoochee*, 22 Fed. Rep. 855, 137, U. S., 330, 11 Sup. Ct. Rep. 122; The *Normandie*, 43 Fed. Rep., 151, 157; The *Bolivia*, 49 do., 169, 1 C. C. A. 221.

2. The ship, however, must also be held in fault for not complying with Article 12 of the new International Regulations, which required that she should be provided with an efficient "foghorn, to be sounded by a bellows or other mechanical means." The ship, on 451
leaving Havre, had such a horn, provided with a piston for blowing it by mechanical means; but there was considerable fog on the voyage, and a few days before this collision the apparatus had got out of order by the derangement of some valve, and a horn blown by the mouth was thereafter used instead.

The object of the new rule, which is as obligatory on sailing vessels as on steamers, (the *Wyanoke*, 40 Fed. Rep., 702; the *Catalonia*, 43, do. 396; the *Bolivia*, 49 do. 169, I. C. C. A., 221), is manifestly for 452
the purpose of securing louder and more penetrating blasts than can be given by the mouth, in order that the presence of vessels in fog may be made known at a greater distance, and a better opportunity thereby be given to avoid collision. If, therefore, there is any obligation at all upon a ship to make provision for the possible giving out of a single foghorn on the voyage, this obligation is not satisfied by supplying a spare horn substantially different from what the statute requires. I cannot doubt that the obligations of reasonable pru-

453 dence do require in a matter so essential to safe navigation upon the Atlantic, as a foghorn for use during fog, that a spare horn should be provided to meet the liability to lose or derangement that may happen from various causes during the voyage. A ship that started across the Atlantic with no spars, compass, chain, or tackle, would surely not be deemed reasonably equipped for the voyage; and she could not plead her lack of equipment in any of these respects as an excuse for non-compliance with the rules of navigation.

454 It is the same with so important an article as a fog horn; and no substitute can be lawfully supplied substantially different from what the statute requires. I cannot follow the *Chilian*, 4 Asp., 473.

It is impossible to say that the lack of a mechanical foghorn in this case would have made no difference. On the contrary, there is every probability that it might have made a difference sufficient to have avoided collision; for the last blast given happened to come after the sails of the ship had been seen. At the

455 previous blast, given probably a minute before, the steamer was too far away to hear it; whereas the blast of a mechanical foghorn, given at the same time, might very probably have been heard, and the slowing of the steamer, which would naturally have been thereupon ordered a minute earlier, would certainly have avoided this collision. It is not incumbent, however, on the steamer to show that the use of a mechanical foghorn would have certainly prevented collision. The burden, upon non-compliance

456 with the statute, is upon the faulty ship. She remains in fault unless she can prove certainly that a compliance with the statute could not possibly have made any difference; and this, as in the case of the *Pennsylvania*, 19 Wall, 125, 137-8, is impossible. The *Bolivia, supra.*

The damages and costs must, therefore, be divided. A decree may be entered accordingly, with an order of reference to compute the damage, if not agreed upon.

A. B.

April 7, 1893.

At a Stated Term of the District Court of 457
the United States, for the Southern District of New York, held at the U. S. Court Rooms, in the City of New York, on the 26th day of July, 1894,

Present—Hon. ADDISON BROWN, Judge.

WILLIAM LAW, BOWMAN LAW, JOHN HIBBERT, THOMAS PERRY, ALBY RYERSON, JOSIAH CROSBY, HERBERT H. BROWN, JAMES F. SCOTT, N. B. HALFIELD, WM. CURRIER, LYMAN E. CANN, HERBERT C. HALL, GEORGE H. PERRY, W. F. HAGAR, sole owners of the late ship "FRED B. TAYLOR," 458

AGAINST 459

The German Steamship "TRAVE," her boats, engines, tackle, &c.

The Commissioner to whom it was referred to ascertain the amount due to the libelants, having filed his report, and the exceptions filed thereto by the libelants and on behalf of the claimant having been duly heard and the same having been severally overruled, and said report having been in all things confirmed, it is 460

Ordered, adjudged and decreed that the libellants above named recover herein one-half the damages sustained by them by reason of the collision in the libel mentioned, being the sum of $23,639, which is arrived at as follows:

461 Value of ship *Fred B. Taylor*, as reported $42,000
Interest from June 21, 1893, to July 6, 1894, date of Commissioner's report . 5,138
Interest therefrom to date of decree (20 days)..... 140

Amount $47,278
Half thereof being..... 23,639

462 together with one-half the excess of libellants costs over costs of claimants up to the trial, being $19.15 and $246.25 libellants costs of reference amounting together to the sum of $23,904.40.

And it is further ordered, adjudged and decreed that the libellants Law and others, as owners of said ship, recover herein against the claimant's stipulators, for the benefit of the following named persons, officers and mariners of the *Fred B. Taylor*, one-half of the damages sustained by them respectively on account of the
463 loss of their personal effects with interest from June 21st, 1892, as follows:

For Charles Jaeger..	$247.67	31.16	278.83 ½	being	$139.41
" Regner Hyacinth	116.16	14.61	130.77 "	"	65.39
" Julius W. Olsen.	130.50	16.42	146.92 "	"	73.46
" Edward Walton.	232.34	29.23	261.57 "	"	130.78
" John Onhsen....	65.17	8.20	73.37 "	"	36.69
" Emilio Andrea...	37.65	4.73	42.38 "	"	21.19
" Peter Fal.....	58.44	7.35	65.79 "	"	32.89
" Theo. Gerdes and his wife	323.67	40.72	364.39 "	"	182.20
" M. le Moal.....	61.24	7.70	68.94 "	"	34.47
464 " Henry Sherlock..	55.86	7.03	62.89 "	"	31.44
	$1,328.70	167.15	$1,495.85		$747.92

being in all the sum of seven hundred and forty-seven $\frac{92}{100}$ dollars, as aforesaid And for which said several sums amounting in all to the sum of twenty-four thousand six hundred and fifty-two $\frac{35}{100}$ dollars said steamship *Trave*, her engines, etc., are hereby condemned.

And it is further ordered, that unless this decree be satisfied or proceedings thereon be stayed on

appeal within the time and in the manner prescribed 465
by the rules and practice of this Court, the stipulators for costs and value on the part of the claimant cause the engagements of their stipulations to be performed or show cause why execution should not issue against their goods, chattels and credits, to enforce satisfaction thereof.

ADDISON BROWN.

[Endorsed:]—Final Decree.—Filed July 27, 1894.

466

467

468

469 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

WILLIAM LAW and others

AGAINST

The German Steamship "TRAVE," her engines, etc.

470

SIRS:

Please to take notice, that the libellants herein hereby appeal to the United States Circuit Court of Appeals for the Second Circuit, from so much of the final decree entered herein on the twenty-seventh day of July, 1894, as apportions their loss and damages, and apportions the costs of the action, and from all parts of the said decree, which do not adjudge to the
471 libellants their full damages and costs against the steamship *Trave*, and the stipulators thereof.

Dated New York, Aug. 2d, 1894.

Yours, etc.,

CARVER & BLODGETT,

Proctors for Libellants.

To Messrs. SHIPMAN, LAROCQUE & CHOATE,

Proctors for the Claimant.

SAMUEL H. LYMAN, Esq.

472 Clerk of the District Court of the United States for the Southern District of N. Y.

[Endorsed:]—Notice of Appeal.—Filed Aug. 2, 1894.

DISTRICT COURT OF THE UNITED STATES, 473

SOUTHERN DISTRICT OF NEW YORK.

In Admiralty.

WILLIAM LAW *et als.*,
Libellants,

vs. 474

Steamship "TRAVE," The NORTH GERMAN LLOYD,
Claimant.

The libellants above-named, appealing from the final decree herein, make the following assignment of errors, viz.:

FIRST.—That the Court should have found and decided that the collision between the steamship *Trave* and the sailing ship *Fred B. Taylor* occurred through no fault on the part of the said sailing ship or of those in charge of her at the time of the collision. 475

SECOND.—That the Court should have found and decided that the said collision was caused solely by the fault of those in charge of the *Trave*.

THIRD.—That the Court should not have imposed on the ship *Fred B. Taylor* the requirement of being provided with two mechanical foghorns. 476

FOURTH.—That the statute requiring a sailing ship to be provided with a mechanical foghorn does not require the vessel to keep a supply of spare horns on board, and that the Court erred in so holding and deciding.

FIFTH.—That the Court also erred in holding and deciding that such a requirement first announced in this case should operate retroactively, and thereby im-

477 pute fault to a foreign vessel, which had begun the voyage fully equipped and provided with all the mechanical horn that had ever before been required by law or custom.

SIXTH.—That the Court should not have apportioned the libellant's collision damages, but should have made a decree against the *Trave* therefor.

SEVENTH.—That the Court should have found that as the ship *Fred B. Taylor* was a British vessel, she
478 was not required, under the statutes and decisions of Great Britain, to have a spare mechanical foghorn on board when leaving port, and that she was therefore without fault.

EIGHTH.—That the Court should have found that the omission to sound a mechanical foghorn did not contribute to the collision which was caused by the immoderate speed of the steamship *Trave*.

479 NINTH.—That the Court should not have apportioned the costs of the action, but should have allowed the libellants full costs against the *Trave* and the claimant thereof.

TENTH.—Whereas, the decree is for the libellants in half damages, it should have been for the libellant in full damages.

And for the failure of the Court to find in the manner prescribed and for other reasons, the libellants pray that the decision of the District Court may be reversed
480 and that a decree may be given for the libellants in full damages against the said claimant, and thereupon the said libellants appeal from the decision and findings of the said District Court according to law, to the United States Circuit Court of Appeals for the Second Circuit, and pray that this, their appeal, may be allowed.

CARVER & BLODGETT,
Proctors for Libellants.

[Endorsed:]—Assignment of Errors and Petition of Appeal.—Filed August 7, 1894.

481

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

WILLIAM LAW *et al.*,
Libellants and Appellants,

vs.

The Steamship "TRAVE," &c., The NORTH GERMAN LLOYD,
Claimant and Appellee.

482

I, SAMUEL H. LYMAN, Clerk of the District Court of the United States of America, for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the District Court in the above-entitled cause made up pursuant to Rule No. 4 in Admiralty of the United States Circuit Court of Appeals for the Second Circuit.

483

In testimony whereof I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 14th day of September, in the year of our Lord one thousand eight hundred and ninety-four, and of the independence of the said United States the one hundred and nineteenth.

[SEAL].

484

SAMUEL H. LYMAN,
Clerk.

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

WILLIAM LAW *et al.*,

v.

The Steamship "TRAVE."

Appeal of the libellants in a case of collision between two vessels, from a decree of the District Court for the Southern District of New York, which divided the damages between the vessels.

SHIPMAN, *C. J.*—The appeal presents but a single question of law. The undisputed facts in regard to the collision are stated by the District Judge, as follows:

"The above libel was filed by the owners of the British ship *Fred. B. Taylor* to recover their damages arising from collision with the North German Lloyd steamship *Trave*, in a dense fog, some 240 miles to the eastward of Sandy Hook, at about half-past six in the morning, steamer's time, June 22, 1892, whereby the ship was cut in two and sunk. The steamer was outward bound, and on her usual course, going about due east. The ship was bound from Havre to New York. The wind was moderate from the west-southwest, and the ship was sailing

upon her port tack, heading about northwest. She had been sailing for several days in fog, so as to be unable to take observations. The steamer, until about five minutes before collision, had clear weather, and was going at about full speed. A few minutes before the collision the sky began to grow hazy; fog was evidently apprehended; two of the lookouts were called down from the crow's nest and stationed at the bow, as required in thick weather. Orders were given to close the compartments and to the engineer to stand by, and a reduction of half a dozen revolutions of the engine was made, bringing the speed of the *Trave* to about 15 knots. The sun, from an hour and a half to two hours high, was still visible. The fog suddenly became dense. Within two or three minutes afterwards the loom of the ship's sails was seen by the starboard lookout a couple of points on the starboard bow, and he immediately reported to the officer on the bridge, who answered the lookout's report with a wave of the hand, and a little afterwards the ship's horn was heard. The steamer's engines were reversed as soon as possible and her helm was put hard aport, but without avail. Her stem struck the port side of the ship at an angle of about 80 degrees between the main and mizzen chains, cut her in two and passed between the two parts of the wreck and disappeared in the fog. Some of the ship's crew were drowned, but most, including the master, were recovered from the wreck."

Upon this state of facts the District Judge was of opinion that it was impossible to acquit the *Trave* of the charge of running at nearly full speed in thick fog and that she must be held to have been in fault. (*The Pennsylvania*, 86 U. S., 125; *The Nacoochee*, 137 U. S., 330; *The Bolivia*, 1 U. S. App., 26.) His decision is conceded to be a correct exposition of the law as declared by the Supreme Court. The second set of facts upon which the question arises, is as follows: The ship *Fred B. Taylor*, a large wooden ship

of 1,800 tons register, left Havre, May 12, 1892, with an efficient mechanical fog horn on board, in good order, and as efficient for producing sound as those ordinarily in use. It was from two and one half to three feet high, was fastened to the deck, was operated by pumping with a handle like that of a pump. The vessel had also on board a good mouth horn. She encountered almost continuous foggy weather. The mechanical horn was used for about ten days in the English Channel and thereafter for about fourteen days, when the valve got out of order about four days before the collision, and the captain was unable to ascertain or remove the cause of the difficulty. It did not thereafter make a proper noise and the captain used the mouth horn which was being properly blown before and at the time of the collision. The inference can fairly be drawn from the facts that the injury to the valve resulted from constant and necessary use upon that voyage and not from want of proper care and attention on the part of the navigators. Article 12 of the International Sailing Rules of 1885 provides that "a steamship shall be provided with a steam whistle, or other efficient steam sound signals * * * and with an efficient fog horn, to be sounded by a bellows or other mechanical means, and also with an efficient bell. A sailing ship shall be provided with a similar fog horn and bell."

The statutory obligation upon a sailing vessel to have a fog horn in a state of efficiency and readiness is imperative; but a temporary inability to furnish such a horn may be excused if a sufficient reason can be given for such inability. The District Judge was of opinion that an accidental injury to the horn during the voyage, without fault of the crew, was not a sufficient excuse, because the obligation of reasonable prudence required, "in a matter so essential to safe navigation upon the Atlantic as a fog horn for use during a fog, that a spare horn should be provided to meet the liability to loss or derangement that may happen from various causes during the

voyage." It is a part of prudence that a ship should be provided with a mouth horn as well as a mechanical horn, because the latter must, as a rule, be fastened or secured to the deck, and oftentimes in heavy weather such a horn could not be used; but if the vessel is provided, at the outset of a voyage across the Atlantic, with an efficient mechanical horn which is in good order, and also has an ordinary horn for use when, through stress of weather or accident not caused by negligence, the other device cannot be employed, we think that the requirements both of the statute and of prudence have been complied with, and that there is a sufficient excuse for the accidental incompetency of the mechanical horn.

It is not desirable to construe a statute for the protection of property and life in such a manner that its requirements can be evaded or easily avoided, but we think that a construction which imposes upon the owners the necessity of providing a supply of mechanical fog horns, so that their efficiency shall be, in a measure, guaranteed, partakes of severity. The *Chilian* (4 Asp., 473), decided by Sir Robert Phillimore in 1881, is a case very much in point. The *Chilian*, a screw steamship, belonging to the port of Liverpool, of 1,306 tons register, collided in a fog in the Irish Channel, upon a voyage from Ballimore to Liverpool, with a Norwegian vessel. Article 12 of the British regulations for preventing collisions at sea is in the language of the Article under discussion. The 17th Section of the Merchants' Shipping Act of 1873 provided that in cases of collision, the vessel which infringes any of the regulations shall be deemed in fault, "unless it is shown to the satisfaction of the Court that the circumstances of the case made departure from the regulations necessary." The *Chilian* had a mechanical fog horn, which was bought at Rotterdam, and found to be satisfactory, but had not been tried upon this voyage, until the day before the collision, when it was found to be out of repair. A powerful mouth horn was thereupon used. Sir Robert Phil-

limore, after consultation with the Trinity Masters, was of opinion that the circumstances did make a departure from the rule necessary, that an accident had befallen the fog horn, which was in itself a proper instrument, and that it would be a severe construction of the act to hold that the vessel was in fault. We are of opinion that International Rule 12 is not more absolute in its requirements than the same British rule had been construed to be in 1881, and that the libellants' vessel presented an adequate excuse for her inability to use a mechanical fog horn at the time of the collision.

The decree of the District Court is reversed, with costs of this Court, and the cause is remanded to that Court, with instructions to enter a decree that the libellants recover the entire damages sustained by them by reason of the collision in the libel mentioned, with costs.

EUGENE P. CARVER, for the Libellants.

WM. D. SHIPMAN and ERNEST LUCE, for the *Trave*.

638

Supreme Court of the United States.

WILLIAM LAW AND OTHERS,
Libellants,

vs.

THE STEAMSHIP "TRAVE," NORTH GERMAN LLOYD,
Claimant.

BRIEF FOR CLAIMANT IN SUPPORT OF PETITION FOR CERTIORARI.

W. D. SHIPMAN,
Advocate.

The Evening Post Job Printing House, New York.

Supreme Court of the United States.

WILLIAM LAW and others,
Libellants,

v.

The Steamship "TRAVE,"
North German Lloyd,
Claimant.

Petition for certiorari to bring up the Record.

Brief for Claimant in Support of the Petition.

As stated in the petition, the only question this Court is asked to consider rests on undisputed facts. The *Fred. B. Taylor* was without a mechanical fog horn as the rule requires. She had only a mouth horn which was not in compliance with the law, and was not heard by the approaching steamship. From the testimony it is fair to conclude that a mechanical fog horn, such as the rule requires, would have been heard on board the steamer, as the weather was mild, in time to have avoided the collision (Record, p. 114, fols. 454–5). Thus one ship was sunk, two lives lost, and the lives of more than six hundred others put in imminent peril.

The excuse offered by the owners of the ship *Fred. B. Taylor* is, that she had a mechanical horn when she left Havre, but it had been out of order for many days before the collision, during which the ship had been sailing in a dense fog.

The District Court held that this excuse was insufficient, and did not relieve the ship from the consequences of disobeying the rule. It having held the *Trave* liable for going at too great a speed, it also held the sailing ship liable for the absence of a mechanical fog horn at the time of the collision. It therefore divided the damages (about $48,000).

The libellants appealed. The only question heard and determined by the Court of Appeals was whether the owners of the *Taylor* had furnished any valid excuse for their disregard of the rule. On this point it disagreed with the Court below and reversed the judgment, throwing the whole loss on the *Trave*.

This, certainly, is a grave question. On it the courts below laid down different and conflicting rules. Under the decision of the Circuit Court of Appeals, if a ship takes on board a mechanical horn, when she starts, and it becomes worthless on the first day out, and she has no means or skill by which it can be repaired, she can sail the ocean for 3,000 miles, putting every ship she meets in thick weather or in the night in imminent peril and yet be free from all liability for the destruction of life and property, however great.

We submit that a question of such grave importance should not be left to rest on the conflicting decisions of the lower courts, but should be authoritatively settled one way or the other by this court of last resort. It should be known by the owners of passenger steamships crossing the Atlantic and by the thousands of souls committed to their care, whether a rule prescribed for their safety can be disregarded with impunity, and the losses thereby incurred thrown on others.

WM. D. SHIPMAN,
Advocate for the Claimant
and Petitioner.

1043

Supreme Court of the United States.

WILLIAM LAW, BOWMAN LAW, JOHN HIBBERT, THOMAS PE
ALBY RYERSON, JOSIAH CROSBY, HERBERT H. BRO
JAMES F. SCOTT, N. B. HALFIELD, WILLIAM CURR
LYMAN E. CANN, HERBERT C. HALL, GEORGE H. PER
W. F. HAGAR, SOLE OWNERS OF THE LATE SHIP "FRED B. TAYL

Libellants

against

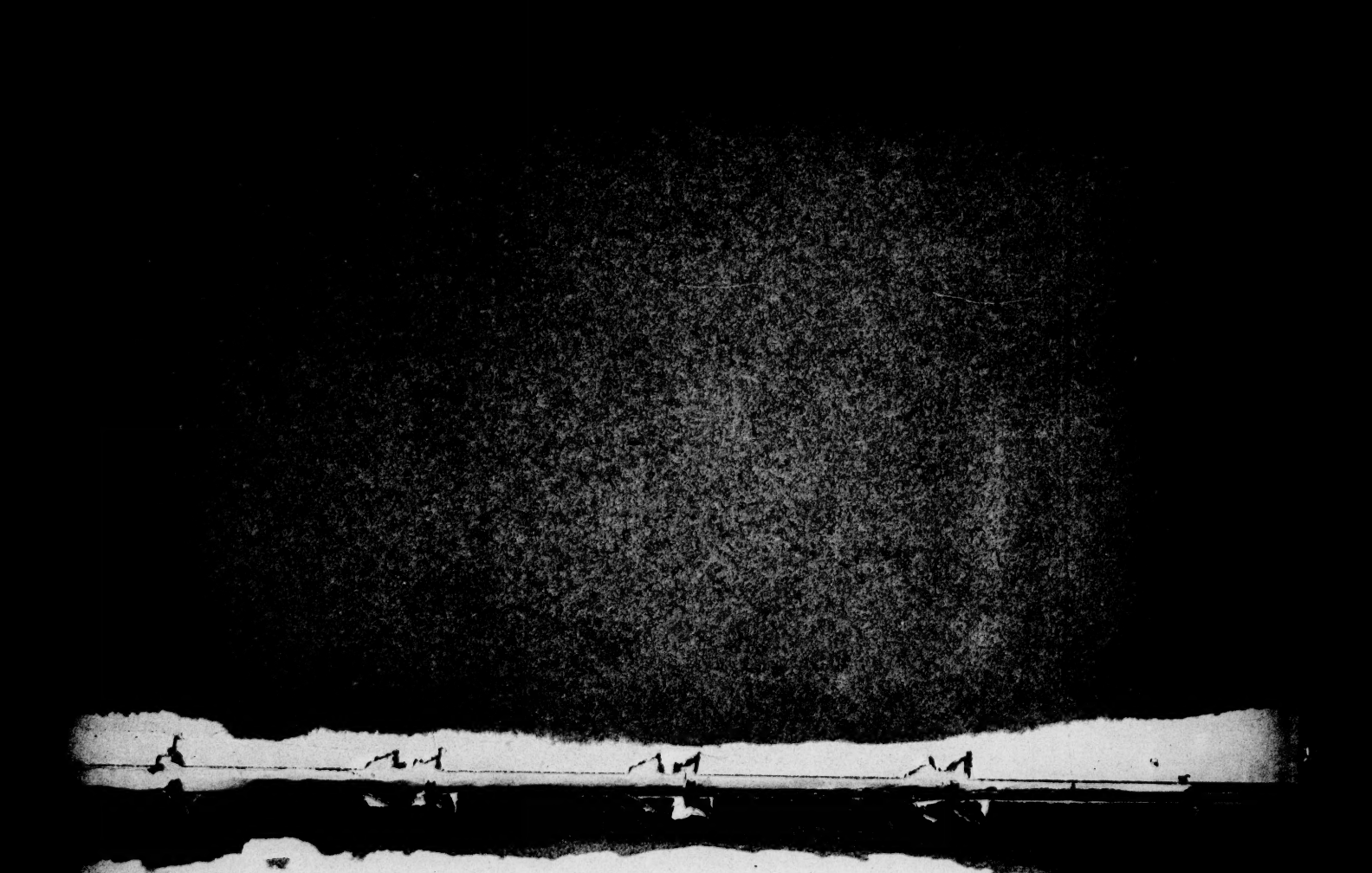
THE GERMAN STEAMSHIP "TRAVE," HER BOATS, ENGINES, TACKLE, &c.
THE NORTH GERMAN LLOYD,

Claimants

PETITION FOR CERTIORARI.

SHIPMAN, LAROCQUE & CHOATE,
Proctors for Claimants

The Evening Post Job Printing House, 208 Broadway, N. Y.



United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

WILLIAM LAW, BOWMAN LAW, JOHN HIBBERT, THOMAS PERRY, ALBY RYERSON, JOSIAH CROSBY, HERBERT H. BROWN, JAMES F. SCOTT, N. B. HALFIELD, WILLIAM CURRIER, LYMAN E. CANN, HERBERT C. HALL, GEORGE H. PERRY, W. F. HAGAR, sole owners of the late ship "Fred B. Taylor,"

Libellants,

AGAINST

The German Steamship "TRAVE," her boats, engines, tackle, &c., THE NORTH GERMAN LLOYD,

Claimant and Petitioner.

Notice is hereby given that upon the petition of the claimant above named, verified the 1st day of June, 1895, and upon all the pleadings and proceedings herein, we shall on Monday, the 3d day of June, 1895, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, submit a

motion, a copy of which is herewith served upon you, to the Supreme Court of the United States, at the Capitol, in the City of Washington.

New York, June 1, 1895.

SHIPMAN, LAROCQUE & CHOATE,
Proctors for Claimant.

To Messrs. CARVER & BLODGETT,
Proctors for Libellants.

SUPREME COURT OF THE UNITED STATES.

WILLIAM LAW, BOWMAN LAW, JOHN HIBBERT, THOMAS PERRY, ALBY RYERSON, JOSIAH CROSBY, HERBERT H. BROWN, JAMES F. SCOTT, N. B. HALFIELD, WILLIAM CURRIER, LYMAN E. CANN, HERBERT C. HALL, GEORGE H. PERRY, W. F. HAGAR, sole owners of the late ship "Fred B. Taylor,"

Libellants,

AGAINST

The German Steamship "TRAVE," her boats, engines, tackle, &c., THE NORTH GERMAN LLOYD,

Claimant.

And now comes the North German Lloyd, by William D. Shipman, its advocate, and moves this Honorable Court for a writ of CERTIORARI directed

to the Honorable Judges of the United States Circuit Court of Appeals for the Second Judicial Circuit, commanding them forthwith to certify and return to this Court all of the proceedings by them had in the suit now or lately before them, wherein William Law, Bowman Law, John Hibbert, Thomas Perry, Alby Ryerson, Josiah Crosby, Herbert H. Brown, James F. Scott, N. B. Halfield, William Currier, Lyman E. Cann, Herbert C. Hall, George H. Perry and W. F. Hagar were libellants, and the steamship *Trave*, her engines, &c., The North German Lloyd, was claimant.

WILLIAM D. SHIPMAN,
Advocate for Petitioners.

TO THE SUPREME COURT OF THE UNITED STATES:

The petition of the North German Lloyd Steamship Company, sole owners of the steamship *Trave*, heretofore named and claimant thereof, in the above entitled suit for a writ of *certiorari* to the Judges of the United States Circuit Court of Appeals for the Second Judicial Circuit, to bring before the Supreme Court of the United States a certain suit in admiralty wherein William Law, Bowman Law, Alby Ryerson, Josiah Crosby, Herbert H. Brown, James F. Scott, N. B. Halfield, William Currier, Lyman E. Cann, all of Yarmouth, Province of Nova Scotia, Dominion of Canada; Herbert C. Hall and George H. Perry, of Boston, District of Massachusetts; W. F. Hagar, of Philadelphia, Eastern District of Pennsylvania, sole owners of the ship *Fred B. Taylor*, of Yarmouth, Nova Scotia, and Edwin F. Hurlbert, master of said ship, libellants, against the German steamship *Trave*, her boats, engines, tackle, apparel and furniture, and all persons intervening therein, in a cause

10 of tort for collision, civil and maritime, respectfully showeth:

FIRST.—That at all times hereinafter mentioned your petitioner, the North German Lloyd, was, and still is, the owner of the steamship *Trave* named herein.

SECOND.—That said North German Lloyd is a foreign corporation, duly chartered by the laws of the North German Empire.

THIRD.—That the sole question in dispute between the parties on the hearing before said United States Court of Appeals for the Second Judicial Circuit
11 was one of law arising on undisputed facts, as will be seen by the record of said case, hereto, annexed, marked A, and the opinion of said Court, hereto annexed, marked B.

FOURTH.—The facts are very simple, as well as undisputed. They are stated with substantial accuracy by the District Judge, Brown, which summary was adopted by the Circuit Court of Appeals, in its opinion, as follows:

"The above libel was filed by the owners of the "British ship *Fred B. Taylor* to recover their "damages arising from collision with the North Ger-
12 "man Lloyd steamship *Trave* in a dense fog some "240 miles to the eastward of Sandy Hook, at about "half-past six in the morning, steamer's time, June "22, 1892, whereby the ship was cut in two and "sunk. The steamer was outward bound, and on "her usual course, going about due east. The ship "was bound from Havre to New York. The wind "was moderate from the west-southwest, and the "ship was sailing upon her port tack, heading "about northwest. She had been sailing for sev-"eral days in fog, so as to be unable to take "observations. The steamer, until about five "minutes before collision, had clear weather, and

"was going at about full speed. A few minutes 13
"before the collision the sky began to grow hazy;
"fog was evidently apprehended; two of the look-
"outs were called down from the crow's nest and
"stationed at the bow, as required in thick weather.
"Orders were given to close the compartments and
"to the engineer to stand by, and a reduction of
"half a dozen revolutions of the engine was made,
"bringing the speed of the *Trave* to about fifteen
"knots. The sun, from an hour and a half to two
"hours high, was still visible. The fog suddenly
"became dense. Within two or three minutes
"afterwards the loom of the ship's sails was seen
"by the starboard lookout a couple of points on
"the starboard bow, and he immediately reported 14
"to the officer on the bridge, who answered the
"lookout's report with a wave of the hand, and a
"little afterwards the ship's horn was heard. The
"steamer's engines were reversed as soon as pos-
"sible, and her helm was put hard aport, but
"without avail. Her stem struck the port side of
"the ship at an angle of about 80 degrees between
"the main and mizzen chains, cut her in two and
"passed between the two parts of the wreck and
"disappeared in the fog. Some of the ship's crew
"were drowned, but most, including the master,
"were recovered from the wreck."

The Circuit Court of Appeals, in its opinion, adds: 15

"The second set of facts upon which the question
"arises is as follows: The ship *Fred B. Taylor*, a
"large wooden ship of 1,800 tons register, left
"Havre May 12, 1892, with an efficient mechanical
"fog horn on board, in good order, and as efficient
"for producing sound as those ordinarily in use.
"It was from two and a half to three feet high,
"was fastened to the deck, was operated by pump-
"ing with a handle like that of a pump. The ves-
"sel had also on board a good mouth horn. She
"encountered almost continuous foggy weather.

16 "The mechanical horn was used for about ten days "in the English Channel, and thereafter for about "fourteen days, when the valve got out of order "about four days before the collision, and the cap- "tain was unable to ascertain or remove the cause "of the difficulty. It did not thereafter make a "proper noise, and the captain used the mouth horn, "which was being properly blown before and at the "time of the collision."

It should be added that the ship *Fred B. Taylor* had been sailing in a dense fog several days before, and down to the time of the collision.

17 FIFTH.—The District Court held—1, that the *Trave* was sailing at too great a rate of speed at the time of the collision, and therefore held her in fault.

SIXTH.—The District Court also held the *Fred B. Taylor* in fault for not having a mechanical fog horn in operation at the time of the collision, and therefore divided the damages; also, that if her mechanical horn had become disabled she should have been provided with a spare one to supply the place of the disabled one.

The libellants appealed to the Circuit Court of Appeals. The claimant did not appeal.

18 SEVENTH.—The question on which the claimant now prays the judgment of this Court is, which of the decisions below is right on the question of the duty of the libellants to have on their ship a mechanical fog horn at the time of the collision, capable of service at the time of the collision.

EIGHTH.—The vast commerce carried on in the Atlantic, and the number of passengers' lives which are liable to be destroyed, or put in peril, are cogent facts bearing on the duty of navigation here raised, and the questions involved in this case, we respectfully submit, should be definitely and authoritatively

settled by this Court, and not left to conflicting de- 19
cisions of the Courts below.

Wherefore, your petitioner prays that this Honorable Court will be pleased to grant a writ of *certiorari* in this cause to the United States Circuit Court of Appeals for the Second Judicial Circuit, to bring this cause before this Honorable Court, and for such other relief as to this Honorable Court may seem meet.

SHIPMAN, LAROCQUE & CHOATE,
Proctors for Petitioner.

Southern District of New York, ss.:

WILLIAM D. SHIPMAN, being duly sworn, says: 20
That he is a member of the firm of Shipman, Larocque & Choate, proctors for the claimant The North German Lloyd, and that he is authorized to make this verification on his own behalf; that he has read the foregoing petition and knows the contents thereof and that the same are true to the best of his knowledge, information and belief. The sources of deponent's knowledge and the grounds of his belief are found in the proceedings and in the record of the cause in the District Court and in the United States Circuit Court of Appeals.

Deponent further says that the claimant is a foreign corporation, having its principal office in the City of Bremen, in the Empire of Germany.

WM. D. SHIPMAN. 21

Sworn to before me this 1st day of June, 1895.

MAURICE SPILLANE,
Notary Public,
City and County of New York.

I hereby certify that I have examined the foregoing petition and that, in my opinion, the petition is well founded, and that the case is one in which the prayer of the petitioner should be granted.

WM. G. CHOATE.

938

B

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

WILLIAM LAW *et al.*,

v.

The Steamship "TRAVE."

Appeal of the libellants in a case of collision between two vessels, from a decree of the District Court for the Southern District of New York, which divided the damages between the vessels.

SHIPMAN, *C. J.*—The appeal presents but a single question of law. The undisputed facts in regard to the collision are stated by the District Judge, as follows:

"The above libel was filed by the owners of the British ship *Fred. B. Taylor* to recover their damages arising from collision with the North German Lloyd steamship *Trave*, in a dense fog, some 240 miles to the eastward of Sandy Hook, at about half-past six in the morning, steamer's time, June 22, 1892, whereby the ship was cut in two and sunk. The steamer was outward bound, and on her usual course, going about due east. The ship was bound from Havre to New York. The wind was moderate from the west-southwest, and the ship was sailing

upon her port tack, heading about northwest. She had been sailing for several days in fog, so as to be unable to take observations. The steamer, until about five minutes before collision, had clear weather, and was going at about full speed. A few minutes before the collision the sky began to grow hazy; fog was evidently apprehended; two of the lookouts were called down from the crow's nest and stationed at the bow, as required in thick weather. Orders were given to close the compartments and to the engineer to stand by, and a reduction of half a dozen revolutions of the engine was made, bringing the speed of the *Trave* to about 15 knots. The sun, from an hour and a half to two hours high, was still visible. The fog suddenly became dense. Within two or three minutes afterwards the loom of the ship's sails was seen by the starboard lookout a couple of points on the starboard bow, and he immediately reported to the officer on the bridge, who answered the lookout's report with a wave of the hand, and a little afterwards the ship's horn was heard. The steamer's engines were reversed as soon as possible and her helm was put hard aport, but without avail. Her stem struck the port side of the ship at an angle of about 80 degrees between the main and mizzen chains, cut her in two and passed between the two parts of the wreck and disappeared in the fog. Some of the ship's crew were drowned, but most, including the master, were recovered from the wreck."

Upon this state of facts the District Judge was of opinion that it was impossible to acquit the *Trave* of the charge of running at nearly full speed in thick fog and that she must be held to have been in fault. (*The Pennsylvania*, 86 U. S., 125; *The Nacoochee*, 137 U. S., 330; *The Bolivia*, 1 U. S. App., 26.) His decision is conceded to be a correct exposition of the law as declared by the Supreme Court. The second set of facts upon which the question arises, is as follows: The ship *Fred B. Taylor*, a large wooden ship

of 1,800 tons register, left Havre, May 12, 1892, with an efficient mechanical fog horn on board, in good order, and as efficient for producing sound as those ordinarily in use. It was from two and one half to three feet high, was fastened to the deck, was operated by pumping with a handle like that of a pump. The vessel had also on board a good mouth horn. She encountered almost continuous foggy weather. The mechanical horn was used for about ten days in the English Channel and thereafter for about fourteen days, when the valve got out of order about four days before the collision, and the captain was unable to ascertain or remove the cause of the difficulty. It did not thereafter make a proper noise and the captain used the mouth horn which was being properly blown before and at the time of the collision. The inference can fairly be drawn from the facts that the injury to the valve resulted from constant and necessary use upon that voyage and not from want of proper care and attention on the part of the navigators. Article 12 of the International Sailing Rules of 1885 provides that "a steamship shall be provided with a steam whistle, or other efficient steam sound signals * * * and with an efficient fog horn, to be sounded by a bellows or other mechanical means, and also with an efficient bell. A sailing ship shall be provided with a similar fog horn and bell."

The statutory obligation upon a sailing vessel to have a fog horn in a state of efficiency and readiness is imperative; but a temporary inability to furnish such a horn may be excused if a sufficient reason can be given for such inability. The District Judge was of opinion that an accidental injury to the horn during the voyage, without fault of the crew, was not a sufficient excuse, because the obligation of reasonable prudence required, "in a matter so essential to safe navigation upon the Atlantic as a fog horn for use during a fog, that a spare horn should be provided to meet the liability to loss or derangement that may happen from various causes during the

voyage." It is a part of prudence that a ship should be provided with a mouth horn as well as a mechanical horn, because the latter must, as a rule, be fastened or secured to the deck, and oftentimes in heavy weather such a horn could not be used; but if the vessel is provided, at the outset of a voyage across the Atlantic, with an efficient mechanical horn which is in good order, and also has an ordinary horn for use when, through stress of weather or accident not caused by negligence, the other device cannot be employed, we think that the requirements both of the statute and of prudence have been complied with, and that there is a sufficient excuse for the accidental incompetency of the mechanical horn.

It is not desirable to construe a statute for the protection of property and life in such a manner that its requirements can be evaded or easily avoided, but we think that a construction which imposes upon the owners the necessity of providing a supply of mechanical fog horns, so that their efficiency shall be, in a measure, guaranteed, partakes of severity. The *Chilian* (4 Asp., 473), decided by Sir Robert Phillimore in 1881, is a case very much in point. The *Chilian*, a screw steamship, belonging to the port of Liverpool, of 1,306 tons register, collided in a fog in the Irish Channel, upon a voyage from Ballimore to Liverpool, with a Norwegian vessel. Article 12 of the British regulations for preventing collisions at sea is in the language of the Article under discussion. The 17th Section of the Merchants' Shipping Act of 1873 provided that in cases of collision, the vessel which infringes any of the regulations shall be deemed in fault, "unless it is shown to the satisfaction of the Court that the circumstances of the case made departure from the regulations necessary." The *Chilian* had a mechanical fog horn, which was bought at Rotterdam, and found to be satisfactory, but had not been tried upon this voyage, until the day before the collision, when it was found to be out of repair. A powerful mouth horn was thereupon used. Sir Robert Phil-

limore, after consultation with the Trinity Masters, was of opinion that the circumstances did make a departure from the rule necessary, that an accident had befallen the fog horn, which was in itself a proper instrument, and that it would be a severe construction of the act to hold that the vessel was in fault. We are of opinion that International Rule 12 is not more absolute in its requirements than the same British rule had been construed to be in 1881, and that the libellants' vessel presented an adequate excuse for her inability to use a mechanical fog horn at the time of the collision.

The decree of the District Court is reversed, with costs of this Court, and the cause is remanded to that Court, with instructions to enter a decree that the libellants recover the entire damages sustained by them by reason of the collision in the libel mentioned, with costs.

EUGENE P. CARVER, for the Libellants.

WM. D. SHIPMAN and ERNEST LUCE, for the *Trave*.

JUN 3 1895
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

IN THE MATTER

OF

The Petition of THE NORTH GERMAN LLOYD for a Writ of *Certiorari* to the United States Circuit Court of Appeals for the Second Circuit.

Brief in behalf of William Law and others, owners of the British ship *Fred B. Taylor*, in opposition to the petition for *certiorari*.

The only question in the cause is whether the ship was in fault for not being provided with two mechanical fog horns on leaving Havre.

The statute, Article 12 of the International Sailing Rules of 1885, provides:

"A steamship shall be provided with a *steam whistle* or other efficient steam sound signals, * * * and with *an efficient fog horn*, to be sounded by a bellows or other mechanical means, and also with *an efficient* bell."

"A sailing ship shall be provided with *a similar fog horn* and bell."

"The ship, on leaving Havre, had such a horn provided with a piston for blowing it by mechanical means; but there was considerable fog on the voyage, and a few days before this collision the apparatus had got out of order by the derangement of some valve, and a horn blown by the mouth was thereafter used instead."

OPINION OF DISTRICT COURT.

The District Judge held the ship in fault for not having a spare mechanical horn, saying: "I cannot doubt that the obligation of reasonable prudence does require in a matter so essential to safe navigation upon the Atlantic as a fog horn for use during a fog, that a spare horn should be provided to meet the liability to loss or derangement that may happen from various causes during the voyage."

In the case of the *Chilian*, 4 Asp. Law Cases, 473, which the District Judge refused to follow, Sir Robert Phillimore stated the law to be that where the mechanical fog horn of a sailing ship breaks down and her mouth horn is made use of in its place in a fog, a departure from Rule 12 is necessary and the sailing ship free from fault.

The Circuit Court of Appeals approved the *Chilian* and held "that International Rule 12 is not more absolute in its requirements than the same British rule had been construed to be in 1881, and that the libel, lants' vessel presented an adequate excuse for her inability to use a mechanical fog horn at the time of the collision."

In the opinion of the Circuit Court of Appeals, Judge Shipman said:

"It is not desirable to construe a statute for the protection of property and life in such a manner that its requirements can be evaded or easily avoided, but we think that a construction which imposes upon the owners the necessity of providing a supply of mechanical fog horns, so that their efficiency shall be, in a measure, guaranteed, partakes of severity.

It is a part of prudence that a ship should be provided with a mouth horn as well as a mechanical horn, because the latter must, as a rule, be fastened or secured to the deck, and oftentimes in heavy weather such a horn could not be used; but if the vessel is provided, at the outset of a voyage across the Atlantic, with an efficient mechanical horn which is in good order, and also has an ordinary horn for use when, through stress of weather or accident not caused by negligence, the other device cannot be employed, we think that the requirements both of the statute and of prudence have been complied with, and that there is a sufficient excuse for the accidental incompetency of the mechanical horn."

We respectfully submit that in view of the unequivocal wording of the statute, the decision of the English Courts and the clear language of the Circuit Court of Appeals, there is no legal ground for the writ of *certiorari*, and the petition should be denied.

June 1, 1895.

EUGENE P. CARVER,
HARRINGTON PUTNAM,
Of Counsel for Law and others.